

No. 14609

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United States  
Court of Appeals  
for the Ninth Circuit

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S. D. HAHN, as Administrator of the Estate of  
Young D. Hahn, Deceased,

Appellant,

vs.

SARAH E. PADRE, as Administratrix of the  
Estate of Herbert Huxley Hahn, Deceased,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court for the Southern  
District of California, Central Division

FILED

APR 18 1955

PAUL P. O'BRIEN, CLERK



No. 14609

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S. D. HAHN, as Administrator of the Estate of  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

EDWARD CARTER MADDUX,

311 Lissner Building,  
524 South Spring Street,  
Los Angeles 13, California.

For Appellee:

TEMPLETON & MILLER,

811 West 7th Street, Suite 301,  
Los Angeles 17, California. [1\*]

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\* Page numbers appearing at foot of page of original Transcript of Record.



In the United States District Court, Southern District of California, Central Division

No. 15951-BH

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA, a corporation, Plaintiff,

vs.

SARAH E. PADRE, etc., et al., Defendants.

S. D. HAHN, as Administrator of the Estate of  
Young D. Hahn, Deceased, Cross-Complainant,

vs.

SARAH E. PADRE, as Administratrix of the  
Estate of Herbert Huxley Hahn, Deceased,  
Cross Defendant.

## CROSS COMPLAINT IN INTERPLEADER

### I.

Jurisdiction exists in the above entitled court under and by virtue of judgment heretofore made and entered November 27, 1953, in the above entitled matter in which cross complainant and cross defendant herein were both ordered to interplead their rights to the proceeds from certain insurance policies.

### II.

That Young D. Hahn died intestate on the 18th day of April, 1953, at which time he was a resident of the County of Los [15] Angeles, State of California, that subsequent thereto, on the 14th day of

May, 1953, S. D. Hahn was appointed as administrator of the estate of Young D. Hahn, deceased, duly qualified as such and has ever since acted as such administrator.

### III.

That Herbert Huxley Hahn died intestate on the 18th day of April, 1953, at which time he was a resident of the County of San Bernardino, State of California, that subsequent thereto, on the 12th day of June, 1953, Sarah E. Padre was appointed as administratrix of the estate of Herbert Huxley Hahn, deceased, duly qualified as such and has ever since acted as such administratrix.

### IV.

On or about May 15, 1941, pursuant to written application therefor, The Prudential Insurance Company of America issued its Juvenile 20-Year Payment Life Policy of Insurance No. D 11 559 107 upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of One Thousand Dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. Said policy of insurance provided and provides, among other things, that the face "amount of insurance," as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the



Home Office of said insurance company, immediately upon receipt at said Home Office of due proof of the death of the insured. Accumulated dividends with interest in the amount of Twenty-Eight Dollars and Nineteen Cents (\$28.19) and a post mortem dividend in the amount of Three Dollars and Thirty-Three Cents (\$3.33) together with the return of premium in the amount of One Dollar and Seventy-Two Cents (\$1.72) have been credited to said policy of insurance. [16]

## V.

On or about March 7, 1944, pursuant to written application therefor, The Prudential Insurance Company of America issued its Juvenile 20-Year Endowment Policy of Insurance No. 12 828 454 upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of One Thousand Dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. Said policy of insurance provided and provides, among other things, that the face "amount of insurance," as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the Home Office of said insurance company, immediately upon receipt at said Home Office of due proof of death of the insured. Accumulated dividends with interest in the amount of Thirty-Six Dollars and Twenty

Cents (\$36.20) and a post mortem dividend in the amount of Five Dollars and Fifty-Seven Cents (\$5.57) have been credited to said policy of insurance.

## VI.

On or about March 7, 1944, pursuant to written application therefor, The Prudential Insurance Company of America issued its Juvenile 20-Year Endowment Policy of Insurance No. 12 828 455 upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of One Thousand Dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. Said policy of insurance provided and provides, among other things, that the face "amount of insurance," as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the Home [17] Office of due proof of the death of the insured. Accumulated dividends with interest in the amount of Thirty-Six Dollars and Twenty Cents (\$36.20) and a post mortem dividend in the amount of Five Dollars and Fifty-Seven Cents (\$5.57) have been credited to said policy of insurance.

## VII.

On or about March 20, 1944, pursuant to written application therefor, The Prudential Insurance Company of Insurance issued its Juvenile 20-Year

Endowment Policy of Insurance No. 12 828 456 upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of One Thousand Dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. Said policy of insurance provided and provides, among other things, that the face "amount of insurance," as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the Home Office of said insurance company, immediately upon receipt at said Home Office of due proof of the death of the insured. Accumulated dividends with interest in the amount of Thirty-Six Dollars and Sixteen Cents (\$36.16) and a post mortem dividend in the amount of Five Dollars and Fifty-Seven Cents (\$5.57) have been credited to said policy of insurance.

### VIII.

That by virtue of Judgment in Interpleader made and entered November 27, 1953, the Prudential Insurance Company of America has deposited the sum of Four Thousand One Hundred Fifty-Eight Dollars and Fifty-One Cents (\$4,158.51) with the Clerk of this court, said sum being the full proceeds payable by virtue of Policies of Insurance Nos. D 11 559 107; 12 828 454; 12 828 455; and

12 828 456, upon the life of Herbert H. Hahn, also known as [18] Herbert Huxley Hahn.

## IX.

That the insured, Herbert H. Hahn, also known as Herbert Huxley Hahn, and the named beneficiary, Young D. Hahn, died as a result of a common traffic disaster in Baja California, April 18, 1953. That the insured, Herbert H. Hahn, also known as Herbert Huxley Hahn, predeceased the beneficiary, Young D. Hahn.

## X.

That the estate of Young D. Hahn is entitled to the proceeds of said policies of insurance on deposit with the clerk of this court by reason of his being the duly named and designated beneficiary thereunder.

Wherefore, cross complainant prays that this court adjudge and determine that cross complainant is entitled to the sum of Four Thousand, One Hundred Fifty-Eight Dollars and Fifty-One Cents (\$4,158.51) now in the possession of the clerk of this court representing the proceeds of The Prudential Insurance Company of America Policies Nos. D 11 559 107; 12 828 454; 12 828 455; 12 828 456, upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, and that the clerk be ordered and directed to pay the same to the cross com-

plainant; and that cross complainant be awarded his costs, and all other proper relief.

EDWARD CARTER MADDUX,  
/s/ EDWARD CARTER MADDUX,  
Attorney for Cross Complainant

Duly Verified.

Affidavit of Service by Mail attached. [20]

[Endorsed]: Filed December 29, 1953.

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[Title of District Court and Cause.]

ANSWER OF CROSS-DEFENDANT SARAH  
E. PADRE, as Administratrix of the Estate of  
Herbert Huxley Hahn, Deceased

I.

Cross-defendant admits the allegations of Paragraphs I, IV, V, VI, VII and VIII of the cross-complaint in interpleader.

II.

This cross-defendant has no information or belief sufficient to enable her to answer the same, and therefore and on that ground she denies that Young D. Hahn died intestate on the 18th day of April, 1953; on the contrary this cross-defendant [21] alleges on information and belief that said Young D. Hahn died on the 19th day of April, 1953.

Cross-defendant admits the remaining allegations of said paragraph II.



## III.

This cross-defendant has no information or belief sufficient to enable her to answer the same, and therefore and on that ground she denies that Herbert Huxley Hahn died intestate on the 18th day of April, 1953; on the contrary this cross-defendant alleges on information and belief that said Herbert Huxley Hahn died on the 19th day of April, 1953.

Cross-defendant admits the remaining allegations of said paragraph III.

## IV.

Answering the allegations of paragraph IX of said cross-complaint, this cross-defendant alleges she has no information or belief sufficient to enable her to answer the same, and therefore and on that ground denies that said Herbert H. Hahn also known as Herbert Huxley Hahn, the insured, or Young D. Hahn, the beneficiary died on the 18th day of April, 1953. This cross-defendant denies on information or belief that the insured, Herbert H. Hahn, also known as Herbert Huxley Hahn, predeceased the beneficiary, Young D. Hahn; on the contrary this cross-defendant is informed and believes and upon such information and belief alleges that said Young D. Hahn the beneficiary predeceased the insured Herbert H. Hahn, also known as Herbert Huxley Hahn.

## V.

This cross-defendant denies generally and specifically each and every allegation in paragraph X of said cross-complaint contained.

Wherefore this cross-defendant prays that this court adjudge and determine that cross-defendant is entitled to the sum of four thousand one hundred fifty-eight dollars and fifty-one [22] cents, (\$4,-158.51) now in the possession of the Clerk of this court representing the proceeds of the policies of insurance set forth and described in said cross-complaint, and that the clerk be ordered and directed to pay the same to the cross-defendant; that cross-defendant be awarded her costs, and all other proper relief.

TEMPLETON AND MILLER,

/s/ By HARRY E. TEMPLETON,

Attorneys for Cross-Defendant [23]

Duly Verified.

Affidavit of Service by Mail attached. [24]

[Endorsed]: Filed January 7, 1954.

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[Title of District Court and Cause.]

## CROSS-COMPLAINT IN INTERPLEADER

### I.

Jurisdiction exists in the above entitled court under and by virtue of judgment heretofore made and entered November 27, 1953, in the above entitled matter in which cross-complainant and cross-defendant herein were both ordered to interplead their rights to the proceeds of certain insurance policies.

### II.

Cross-complainant is informed and believes and

upon such information and belief alleges that Herbert Huxley Hahn died on the [25] 19th day of April, 1953; that at the time of his death said Herbert Huxley Hahn was a resident of the County of San Bernardino, State of California; that thereafter and on the 12th day of June, 1953, cross-complainant was in proceeding No. 23427 In the Superior Court of the State of California, In and for the County of San Bernardino, appointed administratrix of the estate of said Herbert Huxley Hahn, deceased; thereafter cross-complainant qualified as administratrix and ever since said time has been and now is the duly appointed, qualified and acting administratrix of the estate of Herbert Huxley Hahn, deceased.

### III.

That cross-complainant is informed and believes and upon such information and belief alleges that Young D. Hahn died on the 19th day of April, 1953; that at the time of his death said Young D. Hahn was a resident of the County of Los Angeles, State of California; that thereafter and on the 15th day of May, 1953, cross-defendant S. D. Hahn was in probate proceeding 340533 In the Superior Court of the State of California, In and for the County of Los Angeles appointed administrator of the estate of said Young D. Hahn, deceased; that thereafter cross-defendant qualified as administrator and ever since said time has been and now is the duly appointed, qualified and acting administrator of the estate of Young D. Hahn, deceased.



## IV.

On or about May 15, 1941, pursuant to written application therefor, The Prudential Insurance Company of America issued its Juvenile 20-year Payment Life Policy of Insurance No. D 11 559 107 upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of one thousand dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. [26] Said policy of insurance provided and provides, among other things, that the face "amount of insurance", as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the Home Office of said insurance company, immediately upon receipt at said Home Office of due proof of the death of the insured. Accumulated dividends with interest in the amount of twenty-eight dollars and nineteen cents (\$28.19) and a post mortem dividend in the amount of three dollars and thirty-three cents (\$3.33) together with the return of premium in the amount of one dollar and seventy-two cents (\$1.72) have been credited to said policy of insurance.

## V.

On or about March 7, 1944, pursuant to written application therefor, The Prudential Insurance Company of America issued its Juvenile 20-Year Endowment Policy of Insurance No. 12 828 454

upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of One thousand dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. Said policy of insurance provided and provides, among other things, that the face "amount of insurance", as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the Home office of said Insurance Company, immediately upon receipt at the Home Office of due proof of death of the insured. Accumulated dividends with interest in the amount of thirty-six dollars and twenty cents (\$36.20) and a post mortem dividend in the amount of five dollars and fifty-seven cents (\$5.57) have been credited to said policy of insurance.

## VI.

On or about March 7, 1944, pursuant to written application [27] therefor, The Prudential Insurance Company of America issued its Juvenile 20-Year Endowment Policy of Insurance No. 12 828 455 upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of one thousand dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. Said policy of insur-

ance provided and provides, among other things, that the face "amount of insurance", as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the Home Office of due proof of the death of the insured. Accumulated dividends with interest in the amount of thirty-six dollars and twenty cents (\$36.20) and a post mortem dividend in the amount of five dollars and fifty-seven cents (\$5.57) have been credited to said policy of insurance.

## VII.

On or about March 20, 1944, pursuant to written application therefor, the Prudential Insurance Company of America issued its Juvenile 20-Year Endowment Policy of Insurance No. 12 828 456 upon the life of Herbert H. Hahn, also known as Herbert Huxley Hahn, named as the insured thereunder. Said policy of insurance is in the ultimate face amount of one thousand dollars (\$1,000.00) and when issued and delivered as aforesaid, named and designated as beneficiary thereunder Young D. Hahn, father of the insured. Said policy of insurance provided and provides, among other things, that the face "amount of insurance," as therein defined together with any accumulated and post mortem dividends credited to said policy are payable upon legal surrender of said policy at the Home Office of said insurance Company, immediately upon receipt at said Home Office of due proof of the death of the insured. Accumulated dividends with

interest in the amount of thirty-six [28] dollars and sixteen cents (\$36.16) and a post mortem dividend in the amount of five dollars and fifty-seven cents (\$5.57) have been credited to said policy of insurance.

### VIII.

That by virtue of Judgment In Interpleader made and entered November 27, 1953, the Prudential Insurance Company of America has deposited the sum of four thousand one hundred fifty-eight and 51/100 dollars (\$5,158.51) with the Clerk of this Court, said sum being the full proceeds payable by virtue of policies of insurance Nos. D 11 559 107, 12 828 454, 12 828 455 and 12 828 456 upon the life of said Herbert H. Hahn also known as Herbert Huxley Hahn.

### IX.

Cross-complainant is informed and believes and upon such information and belief alleges that the insured Herbert H. Hahn, also known as Herbert Huxley Hahn, and the named beneficiary, Young D. Hahn died as a result of a common traffic disaster in Baja, California on the 19th day of April, 1953; that the insured Herbert Huxley Hahn survived the beneficiary Young D. Hahn.

### X.

That the estate of Herbert Huxley Hahn is entitled to the proceeds of said policies of insurance on deposit with the Clerk of this court by reason of the beneficiary Young D. Hahn predeceasing said insured Herbert Huxley Hahn.



Wherefore cross-complainant prays that this court adjudge and determine that cross-complainant is entitled to the sum of four thousand, one hundred fifty-eight and 51/100 dollars (\$,159.51) now in the possession of the Clerk of this court representing the proceeds of The Prudential Insurance Company of America policies Nos. D 11 559 107; 12 828 454; 12 828 455 and 12 828 456, upon the life of Herbert H. Hahn also known as Herbert Huxley Hahn, and that the Clerk be ordered and directed to [29] pay the same to cross-complainant; and that cross-complainant be awarded her costs, and for all other and proper relief.

TEMPLETON AND MILLER,

/s/ By HARRY E. TEMPLETON,

Attorneys for Cross-Complainant

Duly Verified.

Affidavit of Service by Mail attached. [31]

[Endorsed]: Filed January 7, 1954.

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[Title of District Court and Cause.]

ANSWER OF CROSS-DEFENDANT S. D.  
HAHN AS ADMINISTRATOR OF THE  
ESTATE OF YOUNG D. HAHN, DE-  
CEASED, TO CROSS COMPLAINT IN IN-  
TERPLEADER

Comes now Cross Defendant S. D. Hahn as administrator of the Estate of Young D. Hahn, deceased, and answers the Cross Complaint in Inter-

pleader of Sarah E. Padre as Administratrix of the Estate of Herbert Huxley Hahn, Deceased, as follows:

### I.

Answering paragraph II of said cross complaint, this cross defendant denies that Herbert Huxley Hahn died on the 19th day of April, 1953, and alleges that Herbert Huxley Hahn died on the 18th day of April, 1953. [32]

### II.

Answering paragraph III of said cross complaint, this cross defendant denies that Young D. Hahn died on the 19th day of April, 1953, and alleges that Young D. Hahn died on the 18th day of April, 1953.

### III.

Answering paragraph IX of said cross complaint, this cross defendant denies that Herbert H. Hahn, also known as Herbert Huxley Hahn, and Young D. Hahn, or either of them, died on the 19th day of April, 1953, and alleges that Herbert H. Hahn, also known as Herbert Huxley Hahn, and Young D. Hahn, both died on the 18th day of April, 1953, and that Young D. Hahn, the beneficiary, survived the insured, Herbert Huxley Hahn.

### IV.

Answering paragraph X of said cross complaint, this cross defendant denies, generally and specifically, each and every allegation contained in said paragraph X.

Wherefore, this cross defendant prays that this

court adjudge and determine that this cross defendant is entitled to the sum of \$4,158.51 now in possession of the Clerk of the above entitled court representing proceeds of the policies of insurance set forth and described in said cross complaint, that the Clerk be ordered and directed to pay the same to cross defendant; that cross defendant be awarded his costs; and all other proper relief; and judgment as prayed for in this cross defendant's cross complaint in interpleader on file herein.

EDWARD CARTER MADDOX,  
/s/ By EDWARD CARTER MADDOX,  
Attorney for Cross Defendant [33]

Duly Verified.

Affidavit of Service by Mail attached. [34]

[Endorsed]: Filed January 13, 1954.

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[Title of District Court and Cause.]

### NOTICE OF MOTION FOR ORDER CONTINUING DATE OF HEARING

To: S. D. Hahn, as administrator of the Estate of Young D. Hahn, Deceased, and to Edward Carter Maddox, his attorney:

You and Each of You Will Please Take notice that the cross-complainant and cross-defendant Sarah E. Padre, as administratrix of the Estate of Herbert Huxley Hahn, deceased, will on the 25th day of February, 1954, at the hour of 10 o'clock a.m. or as soon thereafter as counsel can be heard,

in the Courtroom of Hon. Benjamin Harrison, Courtroom No. 8, Federal Building, Los Angeles, California, move the court for an order continuing the hearing in the above entitled matter now set for March 1, 1954 at 2 o'clock p.m. to the 15th day of March, 1954, or to such other date as will be convenient to the court's calendar.

Said motion will be based upon this notice of motion, the affidavit of Harry E. Templeton, a copy of which is herewith served upon you, upon all of the records and files in the above entitled action; and upon the further ground that said continuance would further the interest of justice in said action.

Dated this 23rd day of February, 1954.

TEMPLETON AND MILLER,  
/s/ By HARRY E. TEMPLETON,

Good Cause Being Shown Therefor, It Is Hereby Ordered that the time for the giving of the above notice of motion is hereby shortened to one day.

Dated February 24, 1954.

/s/ BEN HARRISON,  
Judge of U. S. District Court

AFFIDAVIT IN SUPPORT OF MOTION FOR  
CONTINUANCE

State of California,  
County of Los Angeles—ss.

Harry E. Templeton, being first duly sworn, deposes and says:



That he is one of the attorneys for Sarah E. Padre, Administratrix of the Estate of Herbert Huxley Hahn, deceased, cross-defendant and cross-complainant;

That the Court of its own motion ordered the above-entitled matter placed on the calendar on Monday, January 11, 1954, at 10:00 o'clock a.m., pursuant to Rule 16 of the Federal Rules of Civil Procedure, and at that time the parties appeared in the above-entitled matter and the Court set the above case for trial on February 8, 1954, at 2:00 o'clock p.m. and granted unto each party 10 days within which to file documentary evidence upon which he intended to rely;

That thereafter, and within said period affiant presented to the Court duly certified copies of the autopsy reports of the Autopsy Surgeon, Dr. Gustavo Arevalo with respect to Young D. Hahn and Herbert Huxley Hahn, stationed at Mexicali, Mexico; that said reports were offered to show the relative time of death of Young D. Hahn and Herbert Huxley Hahn; that the Court at the time advised the parties that he would rule upon the admissibility of said documents prior to the trial hereof; that the Court did not announce its ruling thereon until the time of the trial on February 8, 1954, at which time the Court sustained the objection of the defendant and cross-complainant Hahn to the introduction of the said autopsy reports and stated in open court that in the interest of justice he would grant a continuance of this

matter to permit the obtaining of further evidence and at the request of the defendant and cross-complainant Hahn, the matter was partially heard and thereafter the Court upon its own motion continued the matter to March 1, 1954, at 2:00 o'clock p.m.; that thereafter affiant went to Mexicali, Mexico, and endeavored to make arrangements for the taking of the deposition of Dr. Gustavo Arevalo and two other witnesses who had been personally present at the scene of the accident, and whose testimony will assist the Court in determining the relative time of death of said decedents which is a material fact in this case; that affiant met with many objections on behalf of the Mexican Officials involved and finally succeeded in arranging for the taking of the deposition of said parties at a date to be fixed.

That affiant immediately endeavored to make arrangements with the deposition reporters acting in Imperial County and ascertained that there were only two reporters available, namely: the regular Court reporters of Imperial County, and that the deposition could not be taken until Saturday, February 27, at 9:30 a.m. That arrangements have been made for the taking of said depositions but that due to the shortness of time it will be practically impossible to have said depositions transcribed and signed by the witnesses in time to be presented in Court on Monday, March 1st, and that in the interest of justice an additional continuance to March 15th is duly requested; that affiant will be ready to

proceed in the trial of the above-entitled matter at that time.

/s/ HARRY E. TEMPLETON

Subscribed and sworn to before me this 23 day of February, 1954.

[Seal]        /s/ VERONICA E. PEREZ,  
Notary Public in and for said  
County and State

[Endorsed]: Filed February 24, 1954.

---

[Title of District Court and Cause.]

NOTICE OF MOTION FOR ORDER RE-OPEN-  
ING CASE FOR ADDITIONAL EVIDENCE  
OR FOR A NEW TRIAL

To: S. D. Hahn, as administrator of the Estate of  
Young D. Hahn, deceased, and to Edward  
Carter Maddox, his attorney:

You and Each of You Will Please Take Notice that the cross-complainant and cross-defendant Sarah E. Padre, as administratrix of the Estate of Herbert Huxley Hahn, deceased, will on the 5th day of April, 1954, at the hour of 11 o'clock a.m. on said date, or as soon thereafter as counsel can be heard, in the Courtroom of Hon. Ben Harrison, Courtroom No. 8, Federal Building, Los Angeles, California, move the court for an order to re-open the above entitled action for the admission of additional evidence, or for a new trial.

Said motion will be based upon this notice of motion, the affidavits of Harry E. Templeton and Ernestine Thomas, copies of which are herewith served upon you, upon all of the records and files in the above entitled action, and upon the ground of newly discovered evidence, and upon the further ground that the ends of justice will be furthered by the granting of said motion.

Dated this 25th day of March, 1954.

TEMPLETON AND MILLER,  
/s/ By HARRY E. TEMPLETON,  
Attorneys for Sarah E. Padre

#### AFFIDAVIT OF HARRY E. TEMPLETON

State of California,  
County of Los Angeles—ss.

Harry E. Templeton being first duly sworn, on oath deposes and says:

That he is one of the attorneys for Sarah E. Padre, Administratrix of the Estate of Herbert Huxley Hahn, deceased, cross-defendant and cross-complainant in the above entitled action; that said action was partially heard on the 8th day of February, 1954, and was continued for further hearing and concluded on the 15th day of March, 1954.

That on the 17th day of February, 1954, affiant for the first time learned that Galdino Loza Cuevas had been at the scene of the accident involving Young D. Hahn and Herbert Huxley Hahn, and was the driver of a 1941 Buick automobile, license

plates B-8-826, and resided at 609 Revolucion Avenue, Tijuana, Baja California; that on the 22nd day of February, 1954, when affiant contacted said Galdino Loza Cuevas in Tijuana, Mexico, he stated to affiant that he had driven said Buick automobile from Tijuana to Mexicali for a woman, for whom he had previously driven, but whose name he did not know; that he (Cuevas) did not know the address where said lady resided, but that he could take affiant to her residence; affiant and Cuevas went to the supposed residence of the lady in Tijuana, and were advised upon making inquiry there that the lady who owned the Buick automobile had moved from said residence some two months previously and they thought she had moved to the United States; that she was married to some one by the name of Thomas, whom they had heard worked in one of the ship yards on North Island.

That affiant made inquiry at the police station at Tijuana as to the ownership of said Buick automobile and was advised that said license plates were listed for a 1940 Ford Sedan automobile, licensed to Jose Arreoga.

That affiant then made inquiry at the United States Immigration authorities at San Ysidro, just across the border from Tijuana as to whether or not a Mrs. Thomas had immigrated to the United States within the past two months, and was advised by the Immigration authorities that they had not since 1951 kept any alphabetical record of the immigrants into the United States and unless affiant could give



them the maiden name of the lady in question they could give affiant no assistance whatsoever; affiant did not know whether Thomas was the given name or the surname of the husband of the lady in question; that affiant requested Mr. Cuevas to keep a look out for the lady in question, and on March 14, 1954, at or about 9:30 p.m. while affiant was driving Galdino Loza Cuevas from Tijuana to Los Angeles to be a witness herein on March 15, 1954, he (Cuevas) stated to affiant that he had just found out that Mrs. Thomas, the lady whose car he was driving on the 18th day of April, 1953, was named Ernestine, and that she was living somewhere in the San Diego area, but he did not know her address; that because the hearing of this action was set for 2:00 p.m. on the 15th day of March, 1954, there was not then sufficient time for your affiant to make any effort to locate said witness prior to said hearing.

That on the 17th day of March, 1954, affiant enlisted the aid of attorney Robert A. Oakes of San Diego, in an endeavor to locate Mrs. Thomas; affiant advised Mr. Oakes that he thought that Ernestine Thomas' husband was employed in one of the ship yards on North Island, and if possible, to contact the ship yards and locate the address of a Mr. Thomas whose wife's name was Ernestine; that on March 19, 1954, Mr. Oakes called affiant and stated that he had been unable to locate the lady in question and recommended that affiant employ a R. S. Gordon, a private investigator to personally go over to the ship yards in an endeavor to locate the lady in question; that affiant, through said

Robert A. Oakes, employed said R. S. Gordon to make said investigation; that in the late afternoon of March 19, 1954, Mr. Gordon called and advised affiant that he had gone to the various ship yards on North Island and that by personally running down their records he had located the address of Mrs. Ernestine Thomas; that affiant went to San Diego County on March 20, 1954, and talked with Mrs. Ernestine Thomas, and on Sunday, March 21, 1954, Mrs. Thomas discussed the facts of the accident in question with affiant and affiant prepared an affidavit with respect to said facts for her signature; that said Ernestine Thomas then went before Henry Brulay, a Notary Public in and for the County of San Diego, State of California, and Henry Brulay personally read said affidavit to Mrs. Thomas in Spanish and she advised him that the contents thereof were true and she then signed and swore to said affidavit. That said affidavit of Ernestine Thomas is attached to this Notice of Motion.

Wherefore affiant prays that the above-entitled matter be re-opened for the taking of further and additional evidence, or that a new trial be granted.

/s/ HARRY E. TEMPLETON,

Subscribed and sworn to before me this 25 day of March, 1954.

[Seal] /s/ VERONICA E. PEREZ,

Notary Public in and for said  
County and State

## AFFIDAVIT OF ERNESTINE THOMAS

State of California,  
County of San Diego—ss.

Ernestine Thomas, being duly sworn, deposes and says:

That on April 18, 1953, I employed Goldino Loza Cuevas, a taxi driver of TiaJuana, Baja California, Mexico to drive my Buick car from Tijuana to Mexicali. We left Tijuana about nine p.m. and made one of several stops, at Rumarosa. About forty-five minutes after leaving Rumarosa, we came to the scene of an accident in which a Nash sedan was involved with a piece of construction machinery. Mr. Cuevas and I got out of my car and went to the right side of the car. The window was down or broken and the body of a man was in the right front seat. He was making no sound and as near as I could tell, he was dead. He did not appear to be breathing. I then went to the other side of the Nash, and assisted the lady who was lying on the pavement next to the drivers seat. She was moaning that she was going to die. The policeman took the little boy, about 12 or 13 years old out of the Nash and handed him to Mr. Cuevas, in his outstretched arms. Mr. Cuevas put the boy in the back seat of my car, as I held the door open. The boy was breathing, in halting gasps. We followed the Mexicali local police car into Mexicali. I leaned over the back seat of the car, and put my hand over onto the boy, to keep him from falling off of the seat. I could feel him breathing in a labored manner, and



also could hear his slight gasps for breath. About ten minutes before we arrived in Mexicali, the boy died. The police did not arrive at the scene of the accident until about an hour after we first stopped, and it took us about thirty to forty minutes, after we left the scene of the accident until we got to Mexicali. This was about two o'clock in the morning. No ambulance ever came to the scene of the accident while I was there.

/s/ ERNESTINE THOMAS

Subscribed and sworn to before me this 21st day of March, 1954.

[Seal]      /s/ HENRY BRULAY,  
Notary Public in and for said  
State

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 26, 1954.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for hearing on the cross-complaints of S. D. Hahn as administrator of the Estate of Young D. Hahn, deceased and Sarah E. Padre, as administratrix of the Estate of Herbert Huxley Hahn, deceased, on the 8th day of February, 1954 and was partially

heard on said date and continued for further hearing and partially heard on the 15th day of March, 1954 and continued for further hearing and concluded on the 16th day of August, 1954, before the Hon. Judge Ben Harrison, Judge presiding, [35] a jury trial having been expressly waived; Templeton and Miller by Harry E. Templeton appearing as counsel for Sarah E. Padre, administratrix of the Estate of Herbert Huxley Hahn, deceased, and Edward Carter Maddox appearing as counsel for S. D. Hahn, as administrator of the Estate of Young D. Hahn on the 8th day of February, 1954 and the 15th day of March, 1954, and Edward Carter Maddox and Isaac Pacht appearing as counsel for S. D. Hahn, as administrator of the Estate of Young D. Hahn, deceased on the 16th day of August, 1954; and oral and documentary evidence having been introduced by the respective parties, and the Court being fully advised in the premises and said matter having been submitted to the court for its decision, the court now makes its findings of fact and conclusions of law as follows:

### Findings of Fact

#### I.

That each and all of the allegations set forth in paragraphs I, IV, V, VI, VII, VIII and X of Sarah E. Padre's cross-complaint are true.

#### II.

That each and all of the allegations set forth in

paragraphs I, IV, V, VI, VII and VIII of S. D. Hahn's cross-complaint are true.

### III.

That it is true that said Herbert H. Hahn also known as Herbert Huxley Hahn and Young D. Hahn died as the result of a collision between a Nash automobile, in which they were riding, and a concrete mixer, on the Tijuana-Mexicali Highway between Tijuana and Mexicali, in Baja California.

### IV.

That it is not true that Herbert Huxley Hahn died on the 18th day of April, 1953, but on the contrary it is true that said Herbert Huxley Hahn died between 1:30 a.m. and 1:50 a.m. on the [36] 19th day of April, 1953 in a Buick automobile which was being driven by Galdino Loza Cuevas from the scene of the accident to the hospital in Mexicali; that said Herbert Huxley Hahn died while said automobile was enroute to the hospital in Mexicali, Baja California, and his body was thereafter taken to the hospital in Mexicali.

That it is true that at the time of his death said Herbert Huxley Hahn was a resident of the County of San Bernardino; that thereafter and on the 12th day of June, 1953, Sarah E. Padre was appointed administratrix of the Estate of said Herbert Huxley Hahn, deceased; that thereafter said Sarah E. Padre, qualified as such administratrix and ever since said time she has been and now is the duly

appointed, qualified and acting administratrix of the Estate of Herbert Huxley Hahn, deceased.

## V.

That it is not true that Young D. Hahn died on the 19th day of April, 1953, but on the contrary it is true that Young D. Hahn died intestate on the 18th day of April, 1953, shortly before midnight, and that thereafter his body was taken direct to the morgue at Mexicali, Baja California.

That it is true that said Young D. Hahn was at said time a resident of the County of Los Angeles, State of California, that subsequent thereto on the 14th day of May, 1953, S. D. Hahn was appointed as administrator of the Estate of Young D. Hahn, deceased, duly qualified as such and has ever since acted as such administrator.

## VI.

That it is not true that the Estate of Young D. Hahn is entitled to the proceeds of said policies of insurance on deposit with the Clerk of this court by reason of his being the duly named and designated beneficiary thereunder.

## Conclusions of Law

1. That Young D. Hahn predeceased Herbert H. Hahn, also [37] known as Herbert Huxley Hahn.
2. That the estate of Herbert Huxley Hahn is

entitled to the proceeds of the subject insurance policies.

Dated this 30 day of August, 1954.

/s/ BEN HARRISON,  
Judge Presiding [38]

Acknowledgment of Service attached. [39]

[Endorsed]: Filed August 30, 1954.

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In the United States District Court, Southern District of California, Central Division

No. 15951-BH

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA, a corporation, Plaintiff,

vs.

SARAH E. PADRE, etc., et al., Defendants.

S. D. HAHN, etc., Cross-Complainant and Cross-Defendant,

vs.

SARAH E. PADRE, etc., Cross-Defendant and Cross-Complainant.

## JUDGMENT

The above entitled cause came on regularly for hearing on the cross-complaints of S. D. Hahn as administrator of the Estate of Young D. Hahn, deceased and Sarah E. Padre, as administratrix of



the Estate of Herbert Huxley Hahn, deceased, on the 8th day February, 1954 and was partially heard on said date and continued for further hearing and partially heard on the 15th day of March, 1954 and continued for further hearing and concluded on the 16th [40] day of August, 1954 before the Hon. Judge Ben Harrison, Judge presiding, a jury trial having been expressly waived; Templeton and Miller by Harry E. Templeton appearing as counsel for Sarah E. Padre, administratrix of the Estate of Herbert Huxley Hahn, deceased, and Edward Carter Maddox appearing as counsel for S. D. Hahn, as administrator of the Estate of Young D. Hahn on the 8th day of February, 1954 and the 15th day of March, 1954 and Edward Carter Maddox and Isaac Pacht appearing as counsel for S. D. Hahn, as administrator of the Estate of Young D. Hahn, deceased on the 16th day of August, 1954; and oral and documentary evidence having been introduced by the respective parties and the court being fully advised in the premises and having filed herein its findings of fact and conclusions of law, Now Therefore,

It Is Hereby Ordered, Adjudged and Decreed:

I.

That the cross-complainant Sarah E. Padre, as administratrix of the Estate of Herbert Huxley Hahn, deceased have judgment for all remaining proceeds of policies numbered 11 559 107; 12 828 454; 12 828 455 and 12 828 456, issued by the Prudential Insurance Company of America, total-



ing the sum of thirty-eight hundred twenty-nine and 11/100 dollars (\$3,829.11), which sum is presently on deposit with the Clerk of the above entitled court, and the Clerk of said court is ordered and directed to deliver said sum to Sarah E. Padre, as administratrix of the Estate of Herbert Huxley Hahn, deceased, and to take her receipt therefor.

II.

That the cross-complainant Sarah E. Padre, as administratrix of the Estate of Herbert Huxley Hahn, deceased, have and recover from the cross-defendant S. D. Hahn, as administrator of the Estate of Young D. Hahn, deceased, her costs of suit herein, taxed at \$207.85. [41]

Dated this 30 day of August, 1954.

/s/ BEN HARRISON,

Judge Presiding [42]

Acknowledgment of Service attached. [43]

[Endorsed]: Filed and Entered August 30, 1954.

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[Title of District Court and Cause.]

NOTICE OF APPEAL

To: The Clerk of the above entitled Court, and to Sarah E. Padre, Cross Complainant and Cross Defendant, and to Templeton and Miller, attorneys for Sarah E. Padre:

Take Notice that cross complainant and cross

defendant S. D. Hahn, as administrator of the Estate of Young D. Hahn, Deceased, in the above entitled action hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the judgment [44] therein rendered and entered in the said United States District Court, Southern District of California, Central Division, on the 30th day of August, 1954, in favor of the cross complainant and cross defendant Sarah E. Padre as administratrix of the Estate of Herbert Huxley Hahn, Deceased, and against cross complainant and cross defendant S. D. Hahn, as administrator of the Estate of Young D. Hahn, Deceased, and from the whole of said judgment.

Dated this 29th day of September, 1954.

EDWARD CARTER MADDUX,  
/s/ EDWARD CARTER MADDUX,  
Attorney for S. D. Hahn [45]

Affidavit of Service by Mail attached. [46]

[Endorsed]: Filed September 29, 1954.

[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 53, inclusive, contain the original Complaint; Judgment in Interpleader; Two Cross Complaints in Interpleader; Two Answers to Cross-Complaints in Interpleader; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Designation of Record on Appeal and two Orders Extending Time to Docket Appeal which, together with the Reporter's Transcript of Proceedings and the original exhibits constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 23rd day of December, A.D. 1954.

[Seal]

EDMUND L. SMITH,  
Clerk

In the United States District Court, Southern District of California, Central Division

No. 15,951-BH-Civil

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA, a corporation, Plaintiff,

vs.

SARAH E. PADRE, as Administratrix of the  
Estate of Herbert Huxley Hahn, Deceased, S.  
D. HAHN, as Administrator of the Estate of  
Young D. Hahn, Deceased, et al., Defendants.

### TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Monday, Feb. 8, 1954

Honorable Ben Harrison, Judge presiding.

Appearances: For Plaintiff: Messrs. Adams, Duque & Hazeltine (no appearance). For Defendant Sarah E. Padre, etc.: Messrs. Templeton & Miller by Harry E. Templeton, Esq. For Defendant S. D. Hahn, etc.: Edward Carter Maddox, Esq. [1\*]

The Court: You may proceed.

The Clerk: The Prudential Insurance Company of America versus Sarah E. Padre and others, No. 15,951-BH Civil.

Mr. Templeton: Ready for the defendant Sarah Padre, your Honor.

Mr. Maddox: Ready for the defendant Hahn.

The Court: Counsel, I was thinking last week

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

I probably should have called you in for a conference.

I feel that the certificates of death are admissible.

It also seems to me that inasmuch as there is sufficient money involved the parties should be able to get some definite proof from somebody other than the coroner who held an inquest and fixed the time of death. I question whether that is sufficient upon which to base a finding of the time of death.

Mr. Maddox: I certainly do too, your Honor. That is my position. I think of course it is up to each person to carry the burden of proof and I am prepared to present my evidence.

The Court: I am not going to take advantage of anybody on account of that situation. Whom do you represent?

Mr. Maddox: I represent the defendant S. D. Hahn, the estate of the father. [3]

The Court: Isn't there a presumption that the insured died first?

Mr. Maddox: No. California adopted the uniform simultaneous death and there is no presumption as to the order of death.

The Court: I thought under the Code there was a section which specifically provides that there is a presumption that the insured died before the beneficiary.

Mr. Maddox: There is one subdivision of the probate code which covers that and it says substantially that unless there is sufficient evidence to the contrary then it will be presumed that death was simultaneous. Then if the death is simultaneous,



that is between the beneficiary and the insured, each one's interest in the policy goes as though he had survived. In other words, the insured, what he had would go to his estate.

That is the way it would happen unless there is other evidence to the contrary.

The Court: It seems to me that I probably should have advised counsel as to my feelings. I don't want to take advantage of either side.

It seems to me there must be some witnesses upon whose testimony the coroner issued a certificate. That testimony must be available. It isn't very far from here.

Mr. Templeton: Your Honor, when I found out the other [4] day about this I called the clerk and I did ascertain—that was Friday—I did ascertain that the court was not going to admit the coroner's certificate. I had reliance upon that. Then of course it was impossible for me at that time to get any witnesses up here from Mexico, at that late stage and consequently I would like to take the deposition of the coroner down there.

The Court: The coroner made a certificate but there apparently was somebody at the scene of this accident almost at the time it happened.

Mr. Templeton: Well, it is very hard to get any testimony out of Mexico.

The Court: It seems to me the family should be able to settle their differences in this case and apportion the money among them rather than have it go all one way or the other. But apparently they want it litigated.



I have read the coroner's autopsy report and I have read the certificate of death, but there is nothing upon which I can act.

I question whether a certificate of death would have the effect that you expect of it. It seems to me there must have been somebody at the scene of the accident before either one of the parties died because the report shows a difference of an hour or half hour between them.

Mr. Templeton: The autopsy surgeon reported three [5] hours.

The Court: Weren't they taken to a hospital?

Mr. Templeton: They were taken to the hospital but I don't believe that both of them got to the hospital before they died.

The Court: There must be some evidence available with reference to that, counsel. There must be some evidence as to that. The certificate of death may be of value but I question it.

Mr. Templeton: You mean the autopsy report or the certificate of death?

The Court: The certificate of death because the coroner had nothing to base it upon.

Mr. Templeton: The certificate of death merely establishes the date of death.

The Court: It attempts to establish the time but I question whether he can fix the time of death.

Mr. Templeton: Well, the autopsy report attempts to fix the time. The certificate is merely the date.

The Court: There must be some information available from which they got that date. Either a

witness should be brought in or there should be depositions taken.

Mr. Templeton: I would like to take the deposition of the people at the hospital.

The Court: It seems to me that information should be [6] obtained.

Mr. Maddox: May I give you my position on this? The simultaneous death act only applies when there is no such evidence by witnesses.

Now, Mr. Templeton's contention is that the son survived the father. Now, he has the burden of proving that because that is the contention that he makes in his pleadings.

And as to the admissibility of the autopsy report, there is California law on whether or not that type of evidence is admissible.

The Court: I am not arguing about the autopsy report. What I am concerned with is the certificate of death.

Mr. Maddox: The certificate of death? All right, it is up to him to bring into court enough and sufficient evidence to meet his burden. It is up to me to bring into court sufficient evidence to meet my burden and I have attempted to do that and I am prepared to proceed today.

We have gone to considerable trouble to get ready for this trial today and to bring before this court the evidence that we think the court needs in order to reach a decision.

The Court: I am willing to hear your evidence, but I am going to give opposing counsel an opportunity to establish the facts by somebody that was

at the scene of the accident or shortly thereafter.

Where did the accident happen? Was it on the main [7] highway?

Mr. Templeton: On the main highway No. 2, between Mexicali and Tijuana.

Mr. Maddox: Also I think if we will ask Mr. Templeton he will tell us that he went down to Mexico immediately after this accident and made a personal investigation and he has known that these issues were coming up.

We have three matters pending which are all depending upon the settlement of this main issue, the order of death.

Now, Mr. Templeton has been down there. I don't think he will deny that we have been prepared in this case for some time. We have discussed the possibility of settlement. We were unable to arrive at a settlement.

Now today we are in court and we are ready to go ahead. I don't think that—I don't know on just what grounds a continuance might be granted. I don't think Mr. Templeton is even asking for one.

The Court: You don't have to worry about the grounds. The court will find it is on the grounds of public interest and in the interest of justice.

Mr. Maddox: I know that the court certainly has that power, your Honor, but I wonder if he really is being taken advantage of or is it unfair? He has had all this time and he has been down there.

The Court: I misled him at the pretrial. I told him I [8] would give him a definite ruling on that

and I didn't have an opportunity to tell him how I felt about the certificate of death.

Now, I might go ahead and accept that certificate of death. I don't know whether it would be error or not.

Mr. Maddox: Well, I think the certificate is admissible to determine the fact of the deaths and the date of the deaths, but to determine priority is something else. I do not think it is admissible for that purpose.

The Court: I am frank to say I felt the coroner was in no position to make that statement as to the time of death. There was nothing to show that he had any information on which to base that. I read the autopsy report and there is nothing to show he had any information before him that indicated the time of death.

It may be that I will have to hold that they were simultaneous. I don't know. But if there was a lapse of three hours between them I think it would be unfair for me to hold simultaneous death.

Mr. Maddox: I think so, too. We all want to get at the facts. As I said before, I have evidence available, we have witnesses available who were there at the scene of the accident and who are here in court today. They are here from Mexicali.

The Court: Let us take their testimony, counsel, and [9] then they won't have to come back. And if counsel has any additional evidence that he wants to submit I will give him an opportunity to do so.

Suppose we take the testimony of those witnesses who are here from a distance and make a record



of that and I will have it before me. Maybe they can fix the time of death. Maybe they can show it is simultaneous. We are not trying to determine these things on mere technicalities. We want to determine what is the truth if we can.

However, I might say that this seems to me a case where the parties should have gotten together. I don't think either one of them should be in a position where they might lose the entire \$4,000.

Mr. Templeton: Your Honor, in this case, first, I want to answer counsel's statement. I did go down to Mexicali shortly after this accident. It was within a couple of weeks, I think. I don't remember exactly.

I went down there. I located the autopsy surgeon. I talked to him and he told me definitely the autopsy report would establish that.

I arranged to get certified copies of that document. That is what I presented here, and which I was relying upon as being sufficient to establish the order of death.

I do, in the interest of justice, ask leave to take the depositions of some witnesses down there because as I say at the time when we came here on the preliminary trial I thought I would have sufficient time after the court's ruling in order to get such evidence as I would need if the court wasn't going to admit that.

The Court: That is the reason I am making this statement now. I don't want to take undue advantage of counsel. I think if we have any witnesses here who were at the scene of the accident or

shortly thereafter, particularly if they came from any distance, so they will not have to come back again, we should take their testimony today. Let us see if we can't ascertain what the facts are, counsel.

Mr. Maddox: All right. Will you take the stand, Mr. Hahn?

Your Honor, I would like to say this. We have agreed that any documents we have would be presented to the court beforehand. The only thing I have is the original of the insurance policies and I have photostatic copies of the policies. I don't know if the court—— [11]

The Court: As I understand, the only dispute here and the only thing for the court to determine is priority of death, whether death was simultaneous or whether there was a difference between them as to the time of death.

Mr. Maddox: That is the only issue.

Mr. Templeton: The only issue is priority of death.

Mr. Maddox: I have an interpreter.

The Court: The interpreter will be sworn.

(J. Duran was sworn to interpret from the Spanish language into the English language and from English into Spanish.)

Mr. Maddox: I will call Mr. Luna.



MACARIO LUNA-RAMIREZ

called as a witness by the defendant S. D. Hahn, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Macario Luna-Ramirez.

Direct Examination

Q. (By Mr. Maddox): What is your occupation, Mr. Luna?

A. I want to know whether at the present time or before because at the present time I am on leave and I have no job at the present time. [12]

Q. What was your occupation on the 18th of April, 1953?

A. Chief of the surveillance department of the Federal Department of Highways.

Q. In what country? A. Mexico.

Q. How long have you held that position?

A. 13 years.

Q. In connection with this position did you ever have any training in first aid? A. Yes.

Q. In connection with this position was it your duty to investigate highway accidents?

A. Yes, that is my work.

Q. Now, did you happen to observe an accident on the highway a few miles from Mexicali on the night of the 18th of April, 1953? A. Yes.

The Court: Ask him if he saw the accident.

The Witness: No, at the time the accident happened, no.

(Testimony of Macario Luna-Ramirez.)

Q. (By Mr. Maddox): Was anyone with you when you came upon the scene of the accident?

A. Yes.

Q. Who was that person?

A. Mr. Bello. [13]

Q. Is he the man who is in the courtroom here today? A. Yes.

Q. Jose Bello? A. Yes.

Q. Did you get any report of this accident before visiting the scene? A. Yes.

Q. From whom did you receive this report?

A. From the rural police.

Q. Approximately what time of the day was it when you received the report?

A. At 11:30 or 11:35 at night.

Q. And what did you do after you received this report?

A. Went to the scene of the accident immediately.

Q. Did you immediately go to the scene of the accident?

A. Yes; because we were traveling. We were on the highway, watching the highway and we went there immediately.

Q. Were you in an automobile?

A. Yes, sir.

Q. Approximately what time did you arrive at the scene of the accident?

A. 10 minutes later at the most.

Q. What did you see when you arrived at the scene of the accident?

(Testimony of Macario Luna-Ramirez.)

A. There was a cement or pavement mixture machine [14] standing on the road on one side of the road and an automobile that hit against the concrete mixer on the right side of the automobile.

Q. Were there any persons present at the scene of the accident?

A. There was a woman lying on the ground on the side of the driver's wheel and inside of the car on the front, on the right side, there was a man pressed right against the front seat and the instrument panel of the car. He was breathing with difficulty.

Q. Was anyone in the rear seat of the car?

A. Yes. On the rear seat there was a boy, a minor. I started to get the things out of the back of the car to see if the child was alive.

Q. Did you make any effort to determine whether or not the boy was alive?

A. Yes, I did.

Q. And what effort did you make?

A. That the child was dead—that he had received a—he had been stricken with something that had produced a hemorrhage.

Mr. Templeton: If the court please, I want to move that he be stricken as an opinion of the witness. There is no foundation laid yet to show that he is qualified as a medical expert. [15]

The Court: Oh, I think he has stated his experi-

(Testimony of Macario Luna-Ramirez.)

ence on the highway. He can testify whether a person is dead or alive. The objection is overruled.

Q. (By Mr. Maddox): Did you observe whether or not the boy was breathing?

A. Yes, I did, but he was not breathing. He had no pulse at all. He was dead.

The Court: Did you feel his pulse?

The Witness: Yes.

Q. (By Mr. Maddox): Now, you said that the man on the front seat was breathing with difficulty.

A. Yes; he was breathing with a great deal of difficulty on account of the position which he was in.

Q. Did you feel his pulse?

A. Yes. And aside from the pulse I could hear him breathing.

Q. Were the bodies later—strike that.

How long did you remain at the scene of the accident?

A. I remained there until help came for the lady and the transportation to the hospital at Mexicali. It may have been around a half hour.

Q. Did the man in the front seat appear to be living during all of that time?

A. Yes, he continued breathing for about 10 minutes longer. [16]

Q. Was he alive when the ambulance came?

A. No, he had died already.

Q. Describe the position in which the boy was sitting in the rear seat.

A. He was not exactly sitting up. He was more or less lying down with his head against the floor

(Testimony of Macario Luna-Ramirez.)

of the car. It appeared—it seemed that the child had been lying on the rear seat, lying down on the rear seat.

Mr. Templeton: I move that be stricken.

The Court: That will be stricken.

Q. (By Mr. Maddox): Was there anything in the rear seat with the child?

A. Yes, some fishing tackle.

The Court: Was there any person in the rear seat?

The Witness: No. There were some boxes made out of galvanized—laminated iron and on account of the impact the things that were in the back of the car with the child were thrown forward.

Mr. Templeton: I move that be stricken as purely an opinion of the witness.

The Court: Well, what materiality is it, counsel? The only thing I am interested in in this witness is that he testified when he examined the boy he had no pulse and the man was still breathing.

I don't know what further questions you can ask. [17]

Mr. Maddox: All right.

The Court: That is the only issue.

Mr. Maddox: I have no further questions.

### Cross Examination

Q. (By Mr. Templeton): Have you at any time ever had any medical training? A. No.

Q. How long have you been with the highway department, the Mexican Highway Department?



(Testimony of Macario Luna-Ramirez.)

A. 13 years.

Q. Prior to that time what was your occupation?

Mr. Maddox: Object to that as being irrelevant.

The Court: Objection overruled.

The Witness: I was employed by the Minister of Communications and Public Works.

Q. (By Mr. Templeton): Have you ever taken any courses——

The Court: I understand this witness's testimony is that he had worked on highway investigations and that is all the medical training he has had. Ask him if that isn't true—that that is all the experience he has had.

The Witness: Employees like ourselves, must have had—we must have first aid training.

The Court: How many accidents have you investigated?

The Witness: Many, many. I do not recall how many. It is in the entire Republic—not only this place. [18]

The Court: How far east of Tijuana was it?

The Witness: I don't remember exactly what distance it was but it seems to me that it was kilometer 160. 160 kilometers from Tijuana—or less. I don't remember exactly.

Q. (By Mr. Templeton): How far was it from Mexicali? A. 30 kilometers.

Q. Where were you at the time you received the call?



(Testimony of Macario Luna-Ramirez.)

A. I was at a place called Colonia Sargosa, which is 12 kilometers from Mexicali.

The Court: How far was it from where you were to the place of the accident?

The Witness: About 18 kilometers.

The Court: How far is that in miles?

The Interpreter: 100 kilometers equals 60 miles.

The Court: Go ahead.

Q. (By Mr. Templeton): Mr. Luna, you said that you received a call from the rural police, is that correct?

A. While patrolling the highway the car of the rural police stopped us on the highway to notify us about that.

Q. Do you know who was in the rural police car?

A. It was an agent of the rural police who is stationed at that place but I do not remember his name.

Q. What kind of car was he in?

A. In a Willys station wagon—a type of station wagon. [19]

Q. Was it a regular police car? A. Yes.

Q. How many men were in that car?

A. Only that agent.

Q. Were you acquainted with him prior to this time? A. Yes.

Q. What was his name?

A. I don't remember.

Q. How long had you known him?

(Testimony of Macario Luna-Ramirez.)

A. The time that I have been in Mexicali. About six or five years.

Q. Do you know where he resides—where he lives? A. At the Progreso Colonia.

Q. Where is that?

A. On the highway at 18 kilometers from Mexicali.

Q. Is that Progreso Colonia—is that in—Colonia Sargosa? Was this Progreso Colonia in the town of Saragosa Colonia?

A. No, they are two different towns. It belongs in the jurisdiction of Saragosa but Colonia Progreso is about five kilometers away.

Q. Which direction? Toward Mexicali, isn't it?

A. Toward Mexicali, yes.

Q. Was this agent that you met in the Willys station wagon the only rural policeman in that town? [20]

A. Well, that agent belongs to the—that agent is of the rural police. He belongs to the rural police and is of the sub-delegation of the Government of Colonia Progreso.

Q. He is from what? A. Sub-delegation.

Q. Will you describe this man for me?

A. He is tall and heavy set.

Q. How old?

A. He may be around 45 years of age.

Q. Does he wear a mustache? A. No.

Q. How heavy would you say he is?

A. He may weigh in pounds—well, I can better

(Testimony of Macario Luna-Ramirez.)

figure it out in kilograms. About 85 or 90 kilograms.

Q. What would be his height, approximately?

The Court: Now, counsel, I am not going to permit this. This is not proper cross examination.

Mr. Templeton: Your Honor, the sole purpose of this is—he has talked to a man who apparently was at the scene of the accident before he was.

The Court: But at the same time I am not giving you an opportunity for discovery. You had that opportunity before trial. I have given you every possible opportunity to prove your case but I am not going to take up all afternoon while you find out if this fellow paints his toenails. [21]

Mr. Templeton: I am simply trying to locate him.

The Court: Do you know where he lives?

The Witness: Yes, at Colonia Progreso.

The Court: That is a small place. You should be able to locate him.

The Witness: There are no streets, no particular street there. It is just a small town. It is an agricultural town.

Q. (By Mr. Templeton): Mr. Luna, did you make a report of this accident to your superiors?

A. A report is made of all accidents.

Q. And in this report did you give them all the details of the accident such as you have testified to here today?

Mr. Maddox: Just a minute. I object to that. I

(Testimony of Macario Luna-Ramirez.)

think that the report itself would be the best evidence of its contents.

The Court: I think that is correct.

Mr. Templeton: I am laying a foundation for that, your Honor. I have the report here. I want to ask him if he made it—if the report that he made would cover all of the facts.

The Court: That is too general. Show him the report.

Q. (By Mr. Templeton): Mr. Luna, I show you a report No. 34 and ask you if you will read that over and tell me whether or not that is the report of the accident as you [22] made it to your superior officer?           A. Yes.

The Court: Do you have a translation?

Mr. Templeton: I have a translation, your Honor.

Mr. Maddox: I object to that document as being irrelevant. It is not inconsistent at all with what he has said here.

The Court: I think counsel has a right to impeach the witness.

Mr. Maddox: Only by an inconsistent statement. This is not inconsistent one bit. I don't think he can point out any inconsistency.

The Court: This isn't a report made out by him, is it?

Mr. Templeton: Yes, your Honor, it appears to be.

The Court: Where?

Mr. Templeton: His name appears on it. This is

(Testimony of Macario Luna-Ramirez.)

a certified copy of the report that shows it is signed by this man. It is on the second page.

The Court: Where is it signed by him?

Mr. Templeton: Right here.

The Court: Will you show me where it appears?

Mr. Templeton: It appears on page 3 of the translation at this point.

The Court: This man's name is Ramirez. This isn't signed by him. [23]

Mr. Templeton: This is a certified copy.

The Court: This can't be used to impeach him. It is something written by somebody else.

Mr. Templeton: Your Honor, may I examine the witness further on this?

The Court: Yes.

Q. (By Mr. Templeton): Mr. Luna, this is a copy of the report which you made to your superior officer? A. Yes.

Q. And up to the point where I am now showing you that was signed by you?

A. Yes, sir; and Mr. Serta (phonetic).

Q. What is his position?

A. He has the same position that I had at that time.

Q. And this is an exact copy of the report which you made to your superior? A. Yes, sir.

Mr. Maddox: I object to that as calling for a conclusion on the part of the witness.

The Court: If he can answer it.

The Witness: Yes.



(Testimony of Macario Luna-Ramirez.)

Mr. Maddox: I would like to take him on voir dire.

The Court: I don't see where there is anything in there that conflicts with your theory of the case, counsel.

Mr. Templeton: The only thing is, your Honor, that it [24] does show that at the time he makes no reference in his report to the fact that either of the parties was alive when he got there.

The Court: He didn't say one way or the other. I don't think that impeaches his testimony in any way, shape or form, counsel.

Q. (By Mr. Templeton): Mr. Luna, was it a practice of yours in making reports to report all of the facts in your investigation?

A. The report that is made is a concrete report. It isn't given with many details because it would be a very long report then.

Q. Why did you not, Mr. Luna, report to your superior with respect to the fact that you found one of the parties alive?

Mr. Maddox: Objected to as being argumentative and irrelevant?

The Court: Let him answer the question.

The Witness: A report is made in that way if the person or the persons arrive at the hospital alive but when do they not arrive at the hospital alive that is not put in the report.

Q. (By Mr. Templeton): Mr. Luna, did you go to the hospital with the two bodies? A. No.

Q. As a matter of fact they were placed in the

(Testimony of Macario Luna-Ramirez.)

ambulance [25] and you didn't see them from that time on.       A. No.

Mr. Templeton: If the court please, I offer this in evidence.

The Court: It will be admitted.

The Clerk: What is it?

Mr. Templeton: It is a certified copy of this officer's report.

The Court: The only thing is, counsel, that reports them both dead. That doesn't substantiate your theory at all.

Mr. Templeton: I know, your Honor, but in my opinion——

The Court: I don't care what your opinion is about the matter. I want to know what the evidence is.

Mr. Templeton: The reason I am offering it is I feel that it shows that if the man had been alive at the time it should have been in the report. It goes to the weight of it, that is true.

The Court: Any further questions?

Mr. Templeton: May this be received?

The Court: Yes.

The Clerk: Exhibit A.

(The document referred to, and marked Defendants' Exhibit A, was received in evidence.)

Q. (By Mr. Templeton): Mr. Luna, have you received any [26] money for your coming up here to testify?       A. The expenses.

Q. How much did you receive?

A. I haven't received anything yet.

(Testimony of Macario Luna-Ramirez.)

Q. Did you receive some money some months ago at the time when you were questioned in regard to this?      A. No.

Mr. Maddox: Just a minute. I object to that as being vague and indefinite as to time.

The Court: Objection overruled.

The Witness: No.

Q. (By Mr. Templeton): Have you been promised any given sum of money for testifying—coming up here and testifying?

A. No, I have not. I have only been taking advantage of the leave that I have now to come here and to visit around Los Angeles—leave of absence.

Q. Have you been promised any amount of money for coming here and testifying today?

A. No.

Mr. Templeton: That is all.

The Court: That is all.

Mr. Maddox: I would like to ask some more questions. [27]

#### Redirect Examination

Q. (By Mr. Maddox): Calling your attention to the report which you signed, Mr. Luna, Exhibit A, you mentioned the names of two people as being found in the car.      A. Yes.

Q. Are those the two people you found in the car on the highway?      A. Yes.

Mr. Maddox: No further questions.

Mr. Templeton: What were their names?

The Witness: Young D. Hahn and Herbert Huxley Hahn.

(Testimony of Macario Luna-Ramirez.)

Mr. Templeton: How do you know their names?

The Witness: When we arrived at the scene of the accident the persons that were involved in the accident have to be identified with their papers or documents.

Mr. Templeton: And you identified them from documents on the parties?

The Witness: Yes, on the clothing.

Mr. Templeton: That is all.

The Court: Call your next witness.

Mr. Maddox: Mr. Bello. [28]

### JOSE BELLO

called as a witness by the defendant S. D. Hahn, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Jose Bello.

The Court: You speak English?

The Witness: No.

### Direct Examination

Q. (By Mr. Maddox): Mr. Bello, what was your occupation on the 18th of April, 1953?

A. Employed by the Federal Office of Transis and Assistant to the Federal Police.

Q. Do you still hold that position?

A. Yes.

Q. Calling your attention to the night of April 18, 1953, were you riding in a car with Mr. Luna that night?

A. Yes.

(Testimony of Jose Bello.)

Q. Do you recall coming upon the scene of an accident on the highway leading from Mexicali?

A. Yes, together with Mr. Luna.

Q. About what time was it when you arrived at the scene?

A. Between 11:30 or 11:40 or thereabouts.

Q. Did you find an automobile there?

A. Yes. [29]

Q. And did you find any person in the car?

A. Yes.

Q. Tell us what you observed as to the condition of the person on the front seat of the car.

A. He was pressed between the front seat and the panel instrument in the front of the car.

Q. Did he appear to be alive or dead?

A. He appeared alive.

Q. What did you observe that makes you say he was alive?

A. He was breathing with difficulty, very badly.

Q. Did you see anyone on the rear seat of the car?

A. Yes, a child.

Q. Did the child appear to be alive or dead?

A. No, he was already dead.

Q. Did you look to see whether or not the child was breathing?

A. Yes, together with Mr. Luna. He examined him first and then I examined him afterwards just to ascertain whether he was dead or alive.

Q. Was the child breathing?

A. No.

Q. Are you sure that this incident you have described took place on the 18th of April?



(Testimony of Jose Bello.)

A. Yes, because this accident was a very peculiar accident and I was there part of the night after the accident [30] happened.

Mr. Maddox: That is all.

The Court: Why did you stay there?

The Witness: Because there was no one else there to watch the road, so that someone else wouldn't have any more accidents.

The Court: You were there when they took the people away?

The Witness: Yes.

The Court: Were they all alive when they left or were taken away?

The Witness: Neither one of the two were alive. They were dead. They had taken the lady away alive.

The Court: Did a separate vehicle take those away that were dead?

The Witness: No, they took the lady away in the ambulance.

The Court: What did they take the others away in?

The Witness: They were taken also in an ambulance but later on.

The Court: You may cross examine.

### Cross Examination

Q. (By Mr. Templeton): Mr. Bello, what training have you had in a medical way—what type of medical training, if any, have you had? [31]

(Testimony of Jose Bello.)

A. Well, the essential training for first aid that is taught in schools.

Q. That is the only training that you have had?

A. Yes.

Q. Were you acquainted with the man in the rural police who informed you of the accident?

A. No.

Q. Is there a radio in the car that you were riding in with Mr. Luna?          A. No.

Q. Was there a radio in the rural police car if you know?          A. Yes.

Q. Did the rural policeman tell you how he found out about the accident?          A. No.

Mr. Templeton: That is all.

Mr. Maddox: I didn't identify these people. May I do that, your Honor?

### Redirect Examination

Q. (By Mr. Maddox): Mr. Bello, did you find out who the persons were in the automobile?

The Court: There is no argument about that is there, counsel? [32]

Mr. Templeton: I don't think so.

Mr. Maddox: All right.

The Court: Call your next witness.

Mr. Maddox: I might say this, that that is substantially my case. I have two other witnesses whose testimony would relate to one thing, the death certificate and the autopsy report which shows the date of death was the 19th. There is testimony showing it was on the 18th when the accident happened and

I have the testimony of two persons who went down there on the 19th. That would be to establish the date of death.

The Court: Are they local witnesses?

Mr. Maddox: Yes.

The Court: And you can call them any time?

Mr. Maddox: Yes.

The Court: Very well. These are the only witnesses from a distance?

Mr. Maddox: That is all. Of course I really don't need them unless this autopsy report—unless there is something else in issue that I am faced with.

The Court: I am not satisfied with the certificate of death and I am going to give counsel an opportunity to see if he can locate any evidence upon which the certificate of death was based.

Now apparently this father and his son were coming home [33] from a fishing trip with their paraphernalia in the car. It happened in a rural area and I don't know how the coroner would have any information unless he had some witnesses on which to base his certificate. And unless there is something to overcome the testimony of these witnesses it seems to me that I am going to have to hold it was simultaneous death.

Mr. Templeton: Your Honor, in regard to the time that is necessary, it takes considerable time to get any work done down in Mexico.

The Court: I am going to continue this matter until 2:00 o'clock March 1st.

Mr. Templeton: Your Honor, I doubt very seri-

ously that that will give sufficient time so far as I am concerned. Every time I try to get something in Mexico it takes so much longer than it does here that I feel that would not be sufficient. I will have to use a Mexican reporter and interpreter down there and I really believe that we should go over a little further.

The Court: Well, see what you can do by March 1st at 2:00 o'clock.

Mr. Templeton: And, counsel, I am willing to stipulate that these other matters, the way the court determines this matter, will be determinative of the others under the statute. Isn't that right, counsel?

Mr. Maddox: I think that would apply. [34]

Mr. Templeton: And consequently we would be wasting time in the other two proceedings to hear the matter there again, so I am willing to stipulate with counsel that those matters may go off calendar.

The Court: Those are matters that I have nothing to do with.

Mr. Maddox: If I may say something? On your last comment you said unless the testimony of these two witnesses is going to be overcome you will have to consider it as a simultaneous death.

I think the testimony of these witnesses will show that it was not a simultaneous death.

The Court: That has the same effect as far as you are concerned, as if there were a simultaneous death.

Mr. Maddox: No, not at all. We are saying it is not a simultaneous death; that the father survived and of course there are cases which say the period

of survivorship does not matter—if it is just an instant, just a moment. We contend that the father survived the son.

The Court: Well, let us find out what the facts are, gentlemen.

Mr. Maddox: If it is simultaneous under the law——

The Court: Let us not argue the facts until they are all in. I will give counsel an opportunity to take depositions. However, I think it is an unfortunate situation in [35] a tragedy of this sort where people can't forget the dollars and cents and get together on a matter like this.

Mr. Templeton: I have tried.

Mr. Maddox: I want the record to show I am objecting to any continuance for Mr. Templeton to gather additional evidence because I think he has had ample time.

The Court: All right. The court on its own motion will continue the case until *May* 1st at 2:00 o'clock.

(Whereupon, at 3:35 o'clock p.m. the above-entitled matter was continued until 2:00 o'clock p.m., March 1st, 1954.) [36]

Monday, March 15, 1954, 2:00 p.m.

The Clerk: You may proceed.

The Clerk: 15,951, Prudential Insurance Company versus Sarah Padre.

Mr. Templeton: We are ready, your Honor.

Mr. Maddox: We are ready.



The Court: You may proceed, gentlemen.

Mr. Maddox: We will rest, your Honor, on the testimony we have already given.

Mr. Templeton: Then, your Honor, I would like to call Mr. William Hahn.

### WILLIAM J. HAHN

called as a witness by the defendant Sarah E. Padre, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Templeton): Mr. Hahn, you are the son of Mr. S. D. Hahn, the plaintiff—administrator in this action?      A. Yes, sir.

Q. And in connection with the bringing of the bodies of Young D. Hahn and Herbert H. Hahn across the border, you were the one that went down to Mexicali for that purpose?      A. Well——

Q. Just answer yes or no. Did you go down there for [38] that purpose?

A. Partially, yes, sir.

Q. And did you make the arrangement for bringing the bodies across the border?

A. No, I didn't.

Q. Well, do you know what date the bodies were brought across the border?      A. No, I don't.

Mr. Templeton: That is all.

The Court: Any questions?

Mr. Maddox: No questions.

Mr. Templeton: Your Honor, I have the original depositions here of Celestino Lupercio Perez and

Gustavo Arevalo. How does your Honor want us to handle these depositions? Do you want us to read them into the record?

The Court: There are two depositions?

Mr. Templeton: We have two depositions.

The Court: I have read them.

Mr. Templeton: Then the only question would be the ruling upon the objections that have been made in the record as to those.

The Court: Have you any additional evidence?

Mr. Templeton: Yes, I do, your Honor, definitely.

I will offer these two depositions. They will either have to be read into the record or maybe counsel will [39] stipulate that the depositions may be read by the court and the court pass upon the objections that have been made and rule upon those objections without counsel being present.

I am willing to so stipulate.

The Court: I think you can stipulate they have deemed to have been read. There is no use reading them again. I have already read them.

I did not see any objections in the depositions that I considered very serious, counsel.

I don't consider that they add very much to what has already been introduced here in evidence.

I was interested in seeing what the autopsy surgeon had to say. The autopsy surgeon expressed an opinion but that opinion is in direct conflict with the testimony that has been introduced here by two other witnesses, eye witnesses.

As to the other witness, I don't see where he has testified to anything that adds to the time of death.

I would like to have counsel point out anything that is helpful in the depositions—not the deposition of the autopsy surgeon but the other deposition.

Mr. Templeton: I would like to argue that after this other testimony is in because it ties into the other testimony that is going to be introduced. May I be permitted to do that?

The Court: I will permit you to argue it, of course. [40]

Mr. Templeton: In other words, where that deposition will tie in is as to the time and in my opinion will tend to discredit the other two witnesses that were on the stand.

The Court: Well, of course there is a conflict but I want to say frankly, counsel, that I thought you could get some better evidence than you have.

Mr. Templeton: I have other evidence.

The Court: I am not satisfied with the opinion that the autopsy surgeon gave in view of the two witnesses' direct testimony as to what took place.

Mr. Templeton: It was offered, your Honor, as purely opinion evidence by an expert witness.

The Court: I wouldn't attach much weight to the testimony of the autopsy surgeon who figured out there there were three hours difference in the time of death. I don't take that as sufficient to overcome the testimony of the witnesses who testified here. I am frank to say that, counsel. I thought that there would be some testimony one way or the other.

Mr. Templeton: I definitely have it, your Honor.

The Court: I haven't heard it yet.

Mr. Templeton: I haven't gotten to it yet.

The Court: I think you can stipulate the objections are overruled. I don't think the depositions add much to this record one way or the other. It depends on which position [41] opposing counsel wants to take.

Mr. Maddox: I have no point to urge as to these objections. Most of these objections were as to foundation. I think that was cured later on in the proceedings, so I am willing that these go into evidence and we proceed with whatever else counsel has.

Mr. Templeton: At this time I offer in evidence Plaintiff's Exhibit No. 1 for identification, which was the autopsy surgeon's report with respect to Young Hahn, which has been identified by him as having been made by him in connection with the——

The Court: That doesn't add anything to his deposition, does it? As I recall his testimony it was his opinion that there was a three hour difference in time between the deaths, but it seemed to me that the testimony with reference to the temperature of the bodies—he didn't make any test of the temperature or deterioration. He admitted that. He admitted that that was not done. I don't think his deposition adds anything to the case. You have here the testimony of two positive witnesses who say that one was alive and that one was dead following the accident.

Mr. Templeton: That is true.

The Court: And I think it would take pretty strong evidence to overcome that.

Mr. Templeton: And I have that evidence. [42]

The Court: Well, I want to hear it.

Mr. Templeton: Your Honor, I renew my offer in evidence of this exhibit that is now Exhibit No. 1 for identification.

The Clerk: Which is it, please?

Mr. Templeton: It is a certified copy of the autopsy report as to Young D. Hahn.

The Court: I shall not admit it because I think the deposition covers it.

Mr. Templeton: I also desire, your Honor, to offer in evidence Exhibit No. 2 for identification which is the autopsy surgeon's report as to Herbert Huxley Hahn.

The Clerk: I have marked your exhibits with letters, Mr. Templeton.

The Court: Marked for identification.

Mr. Templeton: They were for identification.

The Clerk: They haven't been marked.

The Court: I can't prevent you from having them marked for identification.

Mr. Templeton: They were in the deposition for identification.

The Court: He refers to them all the time and as I recall in his original notes—he did not have his original notes and he had to refer to those to refresh his memory.

The Clerk: Will you show me what documents they are, please? We use letters on your exhibits.

Mr. Templeton: It was offered as No. 1 to the deposition.

The Clerk: We will mark it Padre Exhibit B for identification.



(The document referred to was marked Padre Exhibit B, for identification.)

Mr. Templeton: And will you mark this next one?

The Clerk: Padre Exhibit C for identification.

(The document referred to was marked Padre Exhibit C, for identification.)

Mr. Templeton: Now if the court please, at this time I offer in evidence Exhibit B for identification, which is a certified copy of the autopsy report as to Young D. Hahn.

The Court: Have you any objection to its admission, counsel? I don't see that it has anything to do with his deposition.

Mr. Maddox: Since he testified from it it might be permissible for that reason.

The Court: It will be admitted for that purpose.

(The document referred to, and marked Padre Exhibit B, was received in evidence.)

Mr. Templeton: And I am now offering in evidence——

The Court: The same ruling as to the second one.

(The document referred to, and marked Padre Exhibit C, was received in evidence.)

Mr. Templeton: Will you mark this for identification?

The Court: What is that?

Mr. Templeton: This is the report used by the witness Perez to refresh his memory as to the facts with respect to the accident which were made by

him immediately, dictated by him immediately and then read over by him and signed by him immediately after the accident. And this is the excerpt from that which he definitely identified as being the record.

The Clerk: Padre Exhibit D for identification.

Mr. Templeton: I offer it in evidence.

The Court: It will be admitted. I think he cross examined him on that, did he not?

Mr. Maddox: Yes, I did.

The Court: May I see?

Mr. Templeton: Your Honor, I forgot to ask Mr. William Hahn one question. Mr. Hahn, will you take the stand again.

(The document referred to, and marked Padre Exhibit D, was received in evidence.)

### WILLIAM J. HAHN

a witness called by the defendant Sarah E. Padre, having been previously sworn, resumed the stand and testified further as follows:

#### Direct Examination—(Resumed)

Q. (By Mr. Templeton): Mr. Hahn, did you see the automobile that your [45] uncle and cousin were riding in after the accident? A. Yes, sir.

Q. And where did you see it?

A. I saw it at the—well, I guess they would call that the headquarters of the highway police or something. It was in the yard in back.

Q. Do you know the name of the place where you saw it? A. I don't know the name.

(Testimony of William J. Hahn.)

Q. It was there on the yard? A. Yes.

Q. And they would not permit its removal, would they?

A. I don't know because I didn't attempt to remove it.

Q. Do you know what the license number of that car was? A. No, I don't.

Q. I will ask you to take a look at these pictures, Mr. Hahn, and ask you if those are pictures of the car as you saw it on the lot at the district traffic office?

A. Yes, it seems to be the car.

Mr. Templeton: I offer these pictures in evidence, your Honor, as the Padre Exhibit next in order. I took the pictures myself on the 17th day of February in the yard of the district traffic office at Mexicali. That is all.

Mr. Maddox: What year? [46]

Mr. Templeton: This year.

Mr. Maddox: Object to that as being too far removed from the time of the accident.

The Court: What do you claim these pictures show?

Mr. Templeton: The only purpose is to show the condition of the car. We know where the man was riding. It is one of the cumulative facts in evidence which show the possible extent of the injury from the condition of the car itself.

The Court: Do you know whether that car was in that condition at the time of the accident? They were taken how soon after the accident?

(Testimony of William J. Hahn.)

Mr. Templeton: This was taken on the 17th of February this year. I will ask one further question.

Q. (By Mr. Templeton): Does that car, the picture there, appear to be in the same condition—that is the car, does it appear to be in the same condition as it did when you saw the car shortly after the accident? A. It appears to be.

The Court: That will be admitted.

Mr. Templeton: That is all.

The Court: Any questions?

Mr. Maddox: No.

The Clerk: Padre Exhibit E in evidence.

(The photograph referred to, and marked Padre Exhibit E, was received in evidence.)

Mr. Templeton: My witness will need an interpreter.

The Court: Do you have an interpreter?

Mr. Templeton: Yes, Joe Lopez.

(Joe Lopez was sworn as interpreter.)

### GALDINO LOSA CRUEVAS

called as a witness by defendant Sarah E. Padre, being first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Galdino Losa Cruevas.

### Direct Examination

Q. (By Mr. Templeton): Mr. Cruevas, what is your profession? A. I drive a taxi.

(Testimony of Galdino Losa Cruevas.)

Q. And were you so employed on the 18th of April, 1953?      A. Yes, sir.

Q. And on that date did you enter into an agreement for—were you employed by a lady to drive her from Tijuana to Mexicali?

A. Yes, sir.

Q. Did you drive her in your car or in her car?

A. In her car.

Q. Do you know who this lady is?

A. Yes, I do.

Q. Did you know her name on that date? [48]

A. At that time, no.

Q. Had you ever driven for her prior to that date?      A. Yes.

Q. What time did you leave Tijuana?

A. At 9:00 o'clock at night.

Q. On what date?      A. On a Saturday.

Q. Was it the 18th of April 1953?

A. Yes, sir.

Q. At what speed were you traveling from Mexicali—from Tijuana to Mexicali?

A. Between 30 and 35 miles.

Q. Did you make any stops on the way?

A. Yes, four.

Q. What stops did you make on the way to Mexicali?

A. The first one was at Presa—Presa Rodriguez.

Q. Where was the second one?

A. Cuesta Blanca.

Q. Where was the third one?

A. Rumurosa.



(Testimony of Galdino Losa Cruevas.)

Q. And where was the next time you stopped?

A. Where the accident was.

Q. And the next time you stopped?

A. At the hospital.

Q. About what time did you arrive at Rumurosa? [49]

A. About 11:00 o'clock at night.

Q. And were you requested by the lady to stop at Rumurosa and these other places?

A. Yes. She told me to stop. She want to take some medicine and also coffee.

Q. And when you arrived—while you were at Rumurosa did you observe a Nash automobile pass you?

A. Yes.

Q. At approximately what speed was it going?

A. About 50 miles.

Q. And did you see who was driving the car?

A. A lady.

Q. And did you see anyone else in the car?

A. I could see some person inside.

Q. Did you again see that car that same night?

A. Yes, about 45 minutes afterwards when the accident happened.

Q. Was that about 45 minutes after you had left Rumurosa on your way to Mexicali?

A. Yes.

Q. And when you arrived at the scene of the accident what did you find?

A. (No answer.)

Q. What did you see?

A. I met the car, the one that passed me and

(Testimony of Galdino Losa Cruevas.)

I also [50] met a lady that was thrown down on the ground.

Q. Had the car hit something?

A. Yes; it had hit a machine that was standing there, a cement machine.

Q. And was the car up against the machine, the cement machine or not?      A. Yes.

Q. And where was the lady?

A. She was laying on the ground, on the floor, right in the middle of the road.

Q. On which side of the car?

A. The lady?

Q. Yes.

A. On the left side—on this side.

Q. On the driver's side of the car?

A. Yes, sir.

Q. Did you go up and examine the car?

A. We stopped and the watchman told us to help him to see what had happened in there.

Q. What did the watchman tell you had happened?

The Court: That is hearsay.

Mr. Templeton: I will withdraw the question.

Q. (By Mr. Templeton): Did you observe a man in the car?      A. Yes. [51]

Q. What did you observe about the man?

A. He was dead.

Q. Was he making any sound whatsoever?

A. No, no.

Q. Where was his face with respect to the windshield of the car?

(Testimony of Galdino Losa Cruevas.)

A. About, more or less, about five inches from the glass.

Q. What was the condition of the weather?

A. Cold.

Q. Was the wind blowing?

A. There was a lot of wind. It was just a lot of wind.

Q. Did you determine whether or not the man was or was not breathing?

A. Yes, well, yes, I noted that he wasn't breathing at all.

Q. Did you see the boy at that time?

A. No, I did not see him. Only I heard that he was making a kind of noise, but I saw him when they took him out.

Q. After you got to the scene of the accident what did you do with respect to trying to obtain help?

A. Well, I stopped and I got my flashlight out in order to stop any car that might come, because she was [52] laying in the middle of the road.

Q. And did any of the cars stop?

A. Only one.

Q. Approximately how many cars went by before this one car stopped?

A. Around 15 cars.

Q. And how long was it after you got to the scene of the accident before the first car stopped?

A. About 15 minutes—between 15 and 20 minutes.

Q. And did the car that stopped—do you know

(Testimony of Galdino Losa Cruevas.)

whether—well, did the car drive on to some other place, the first car that stopped? Did the car drive on toward Mexicali?       A. Yes.

Q. And how long was it before any police cars arrived at the scene of the accident?

A. About a half hour.

Q. What cars arrived at the scene of the accident? What police cars arrived there?

A. First the police, the traffic officer arrived first. About two or three minutes after that the police arrived.

Q. By the traffic officer do you refer to the Federal District Traffic Officer?

A. Do you want me to say that is the officers?

Q. No, just answer my question. Read the question.

(Question read.)

A. Yes, Federal.

Q. And what were the other police officers that you referred to?

A. The traffic officers arrived first and then the other ones with the policemen.

Q. And the police. Where were the police from, if you know?       A. Mexicali.

Q. Do you know what the number of the police car was?       A. Yes.

Q. What was it?       A. No. 1.

Q. And how long was it—what interval was there between the time that the Federal Traffic Officers arrived and the Mexicali local police arrived?

(Testimony of Galdino Losa Cruevas.)

A. From Mexicali to where the accident was?

Q. No, no, the difference between—I will withdraw the question.

After the Federal Traffic Officers arrived at the scene of the accident how long was it before the Mexicali police arrived at the scene of the accident?

A. Oh, two or three minutes. They came right over. [54]

Q. After the police arrived what did you observe?

A. They opened the car. They took the baby out of the car and gave to me—put it in my hands.

Q. How was the baby placed in your arms?

A. I put my hands like this and they put the baby right over my hands.

Q. Indicating with his hands outstretched in front of him. How handed the baby to you?

A. The traffic—one of the traffic officers.

Q. And at the time the boy was handed to you did you determine whether or not he was dead or alive?

A. He was alive yet.

Q. Did you hear him make any noises or not?

A. Yes; he was making noises like he was very sore.

Q. Will you show the court as near as you can the type of noise that the boy was making?

(Witness demonstrating.)

Q. Was the boy's body warm or cold?

A. It was warm. It was alive.

Q. And what did you do with the boy?



(Testimony of Galdino Losa Cruevas.)

A. I put the baby on the back seat of the car in order to take him away.

Q. At whose request did you put the boy in your car?  
A. The officer.

Q. Which officer? [55]

A. The traffic officer.

Q. Did you see what happened to the woman?

A. They picked her up. The traffic officer picked her up. The officer put her on the car because my car was in back of the police car.

Q. Well, which officer put her in a car?

A. The local officers.

Q. And were you given any instructions by the traffic officers as to what to do with the boy?

A. They told me to follow them until we arrive at the hospital.

Q. Which officers told you that?

A. The traffic officers.

Q. And did the local police car then leave the scene and head toward Mexicali?

A. Yes. They went to the hospital right away.

Q. And did you follow immediately?

A. Yes.

Q. Did you keep up with them?

A. Not quite too close because the baby was sick and also the lady was sick.

Q. By the lady you are referring to the lady who was riding in the car with you?  
A. Yes.

Q. After the baby was placed on the back seat of [56] the car where did the woman that was with you sit?

(Testimony of Galdino Losa Cruevas.)

A. In the front, on the front seat.

Q. Was she—do you know whether or not she was or was not looking at the boy?

A. Yes, she was holding him here.

Q. Indicating with the right hand. In other words she was in the front seat with her hand over to the back seat?

A. Yes, sir.

Q. How long did it take you to get from the scene of the accident to the hospital at Mexicali?

A. About a half hour.

Q. And when you arrived at the hospital in Mexicali—I will withdraw that.

Did anything happen to the boy that you know of while you were enroute from the scene of the accident to the hospital at Mexicali?

A. Just as we arrived at Mexicali he pass away. The lady that was with me said to me “He is dead now.”

Mr. Maddox: Move to strike the last answer as hearsay.

The Court: Motion granted.

Q. (By Mr. Templeton): Mr. Cruevas. you arrived at the hospital—when you arrived at the hospital what was then done with respect to the body of the boy?

A. They took the baby out of the car and put him [57] inside the hall.

Q. Who took the baby out of the car?

A. The local officers. I just opened the door for them.

(Testimony of Galdino Losa Cruevas.)

Q. Was that the same officer that was at the scene of the accident?

A. Yes, the car No. 1. They are the ones that took the lady.

Q. When you went and looked at the man did you notice whether there was or was not any moisture on the inside of the windshield?

A. There was no fog. Only lots of wind was going on.

Q. Mr. Cruevas, on the inside of the windshield in front of the man's face did you notice whether there was or was not any moisture in front of his face?

A. No, it was not.

Mr. Templeton: Your Honor, we have a stipulation that the three people that were in the car as to whom this witness has testified, were Mrs. Ella Moya Diaz, Herbert Huxley Hahn and Dr. Young D. Hahn.

Mr. Maddox: Stipulate to that.

Mr. Templeton: I offer in evidence a map of the road showing these towns merely for the court's guidance and that is a map by the National Automobile Club. I do not offer [58] it for the purpose of showing the exact accuracy of it at all but only to show the road.

The Court: Any objection?

Mr. Maddox: No questions.

Mr. Templeton: Cross examine.

(The document referred to was marked Padre Exhibit F, and was received in evidence.)

(Testimony of Galdino Losa Cruevas.)

Cross Examination

Q. (By Mr. Maddox): Mr. Losa, you said that when you first arrived at this accident you saw the man but you did not see the boy, is that true?

A. No; I didn't see the child because it was covered with the seat. I couldn't see him.

Q. Have you ever had any kind of medical training, Mr. Losa?      A. No.

Q. Have you ever had any training in first aid?

A. Many times.

Q. Under what circumstances?

A. Well, just helping around where there is any accident.

Q. My question was have you ever had any training.

The Court: Schooling you might ask.

Q. (By Mr. Maddox): Schooling in first aid?

A. No, no, no schooling.

Q. On what do you base your opinion that the man was dead?

A. Because it was laying in there—wouldn't move, wouldn't breathe. Anybody can tell a dead man.

Mr. Maddox: I move to strike that.

Q. (By Mr. Maddox): You told Mr. Templeton that there was no moisture on the windshield in front of the man's face. Did you look to see whether or not there was any moisture?

A. No, there was none.

The Court: How do you know?

(Testimony of Galdino Losa Cruevas.)

The Witness: Because I put my flashlight right close to him that way.

Q. (By Mr. Maddox): Why did you do that?

A. To find out if he was just hurt or sick or dead because the night watchman told me to look "Look here this man is dead."

Mr. Maddox: I move to strike that as not responsive.

Mr. Templeton: I think it is responsive. He asked what the basis was.

The Court: Objection overruled.

Q. (By Mr. Maddox): Did you have a conversation with any of these police officers that night?

A. Absolutely none.

Q. Do you know a police officer by the name of Celestino [60] Lupercio Perez. A. No.

Q. You referred to one police officer as a traffic officer and another one as a local officer?

A. Yes; there were two of them.

Q. Which one was driving this car No. 1?

A. The local officer.

Q. Did the local officer ever give his name?

A. No.

Q. Did you give the officer your name?

A. Yes; at the hospital I gave all the information I knew.

Q. Well, did you talk with him? Did you have a conversation with him?

A. Yes; when I arrived at the hospital with the baby.



(Testimony of Galdino Losa Cruevas.)

Q. Was that the first time you had any conversation with him?

A. That was the first and last.

Q. Did you not discuss the condition of the boy at the scene of the accident? A. No, sir.

Q. You stated that you drove into town behind the police officer's car. Was that true?

A. Yes.

Q. And was that the local officer driving car No. 1? [61] A. Yes.

Q. And that is the same officer that you gave this information to at the hospital?

A. Yes, that is the same one.

Q. Is he the same one who took the boy's body out of the car? A. No.

Q. Who took the body out of the car?

A. The traffic officer.

Q. What was the local officer doing while the traffic officer was taking the body out of the car?

A. He was picking up the lady.

Q. And did he put the lady in his car?

A. Yes, into the police car, yes.

Q. How long did this local officer stay at the scene of the accident?

A. Oh, about five minutes.

Q. And were you there when he arrived?

A. Yes.

Q. Were you there when he left?

A. Yes; we went together.

Q. What was that? A. We went together.

Q. Went where together?

(Testimony of Galdino Losa Cruevas.)

A. To the hospital. [62]

Q. Did the local police officer look at the boy to see if he was living?

A. The local officer? No. The traffic officer was the one.

Q. How close was your car parked to the car of the local officer?      A. About a mile.

Mr. Templeton: Will you read the question and answer?

Mr. Maddox: Will you ask the question again? I think the witness misunderstood.

A. The car of the accident was in the middle. My car was on the right-hand side and the car of the officer was on the left side.

Q. (By Mr. Maddox): Did the local police officer tell you to follow him into town?

A. Yes.

Q. Did he at any time see the boy?

A. Not until we got to the hospital.

Q. He saw the boy when you had him in your arms—when the other officer handed him to you in your arms, did he not?      A. Yes.

Q. You mean that he did not closely examine the boy until you arrived at the hospital?

A. The officer did not see the boy until we arrive at [63] the hospital.

The Court: Where is the woman who was your passenger that night? Do you have her as a witness?

Mr. Templeton: No, your Honor. I haven't. I have made every effort to locate her and I went

(Testimony of Galdino Losa Cruevas.)

with this gentleman over to the place where she had lived there in Mexicali and determined from the people there that she had left there approximately two months before, for somewhere in the States.

And that night—I mean last night when I was bringing this man up from Tijuana for the first time he told me that he had gone back over there and he had gotten the name from someone over there. They told him that this woman's name was, I believe, Ernestine Thomas.

Q. (By Mr. Templeton): What was the name of the woman that you told me you found out just the other day?      A. Ernestine Thomas.

Mr. Templeton: Ernestine Thomas. And that is the first time I even heard her name.

I inquired of the people where she was residing and the only thing they knew she was married to a North American citizen of the United States, whose name was, they thought, was Thomas. They didn't know where she had gone.

I inquired of the immigration authorities there at the border. They could not give me any information unless I could give them her maiden name.

Then I found out last night that she is supposedly living in Coronado but it was then too late. I couldn't do anything at 8:30 last night to try to locate the woman at that stage and that is the first knowledge that I have gotten as to her name or where she might possibly be located.

(Testimony of Galdino Losa Cruevas.)

The Court: Proceed with your cross examination.

Mr. Maddox: Will you read the last question and answer please?

(Question and answer read as follows:

“Q. What was the name of the woman that you told me you found out just the other day?

“A. Ernestine Thomas.”)

Q. (By Mr. Maddox): You said a few moments ago, did you not, that the officer did see the boy when he was handed into your arms?

A. There are two kinds of policemen. Some of them are Federal. The other ones are local officers. I meant the traffic officer was the one that gave him to me. The other one was attending to the woman.

Q. When the traffic officer handed you the boy and you put the boy into your car that was all done in the presence of the local officer, was it not?

A. No, because they were attending to the woman. They were taking the lady over to the other car.

Q. Now, you said that the traffic officers told you to [65] follow them to the hospital. Strike that. I withdraw that.

You said the local officer told you to follow him to the hospital? A. Yes.

Q. Before that had you told the local officer that you had the boy in your car?

The Court: What was the question?

Q. (By Mr. Maddox): Before that had you

(Testimony of Galdino Losa Cruevas.)

told the local officer you had the boy in your car?  
I will ask it again.

Before the local officer told you to follow him to the hospital had you told him that you had the boy in your car?

A. I already had the child in the back of my car. He ordered me to come on, "let us go."

Q. All right. Was the traffic officer alone or was there another officer in the car with him?

A. There were two of them.

Q. Do you know the name of the other one?

A. I don't know the name of either one of them.

Q. Was the Federal officer alone or was there another car with him?

A. There were two local officers and two Federal officers.

Q. So then there were four officers there at one time?      A. Yes. [66]

Q. Did the Federal officer leave at the same time the local officer left?      A. No.

Q. Was this child a young baby?

A. No; it was around 13 years old.

The Court: Any more questions?

Mr. Maddox: Wait just a minute, your Honor. I think so.

Q. (By Mr. Maddox): Did you, Mr. Losa, check the pulse of the man in the car at the time you arrived there?      A. The one I was taking?

The Court: No, the man.

The Witness: No, no.

Mr. Maddox: No other questions.



(Testimony of Galdino Losa Cruevas.)

The Court: Any further questions?

Mr. Templeton: Yes, Mr. Cruevas.

By the way, your Honor, Mr. Maddox refers to him as Mr. Losa but he prefers to be called by the last name of Cruevas. We are both referring to the same man.

### Redirect Examination

Q. (By Mr. Templeton): Mr. Cruevas, were you ever prior to the time you were in the taxi business, were you ever in the Army, in the Mexican Army? A. Yes, a long time ago.

Q. And what rank did you obtain? [67]

A. Regiment No. 72.

Q. What was your rank?

Mr. Maddox: Object to that as immaterial.

The Court: I think he wants to show—objection overruled.

The Witness: I was driving a horse—horse riding.

Q. (By Mr. Templeton): Did you obtain the rank of captain, lieutenant, major or just a private?

A. Yes, I was lieutenant.

Q. Mr. Cruevas, you stated that you did not know the name of the policeman from the Mexicali police department. Did you know the man by sight? A. One of them, yes.

Q. And was that the man that took the information from you at the hospital?

A. Yes, he is the officer.

Q. What was done if you know—withdraw that.

At the time when you left the scene of the acci-

(Testimony of Galdino Losa Cruevas.)

A. No.

Q. Were you arrested about June of 1952?

The Court: Just a moment. That is not a proper question.

Mr. Templeton: Just a moment.

The Court: "Was he arrested"?

Mr. Maddox: I am trying to refresh his memory, your Honor, as to the time of the occasion.

The Court: You asked an impeaching question and he said no. If you have evidence to the contrary you can introduce it. When counsel asks that question he had better ask it in good faith and be able to prove it.

Mr. Maddox: I am going to prove it by him. If it can't be proven this is a judge court and not a jury.

The Court: What is that?

Mr. Maddox: I don't think any prejudice will result from this. I am trying to find out now——

The Court: Well, he answered the question, and I think that is as far as you can go. You asked the question: "Were you convicted of a felony." That is the only way you can impeach him in that regard.

Mr. Maddox: I have no further questions.

The Court: That is all.

Mr. Templeton: That is all.

If the court please, I think that the woman in this case is a material witness. As I stated before I did everything [71] I could to get her name and address where I might locate her.

With the court's indulgence I would like additional time to bring that evidence before the court. The only way I can do it is to go out——

The Court: I think we had better finish the case up today. I have given you one continuance, counsel.

Mr. Templeton: I understand, your Honor, but I wanted to show the court my intention of good faith to bring all the witnesses here.

The Court: Have you any other witnesses?

Mr. Templeton: No, your Honor.

The Court: Have you any rebuttal?

Mr. Maddox: Your Honor, there is one issue as to the date that this happened. I think in my mind it has been resolved; I don't know whether the court has any question.

The doctor stated they died on the 19th. He examined the bodies on the 19th and they had died just shortly before that.

Now, of course, the evidence has already been presented that this happened on the night of the 18th by Mr. Templeton's witness.

I would have another witness only as to that one limited point, that this occurred on the 18th and that to contradict the testimony of the doctor that this happened on the 19th.

Mr. Templeton: Your Honor, I don't think the question of [72] whether it happened on the night of the 18th or the night of the 19th is really material here. I think we are all testifying about the same thing, the same accident.

The Court: I think that is true.

Mr. Templeton: The accident took place on Sat-

urday night and the question of whether or not the death took place a little after midnight or not is a question for the court to resolve.

Mr. Maddox: He said he was called on Sunday night.

The Court: And the death occurred shortly before that. That was his testimony. I don't think that is material.

I am also frank to say that I don't think his testimony adds very much one way or the other. I don't think that these people died so closely together—strike that. I do not think that he can tell that one died three hours before the other. I just can't put any weight to it.

Mr. Templeton: It was only for the purpose of giving the court the benefit of such evidence as we could bring to the court by an expert witness who did examine the bodies. That was the only purpose of it.

The Court: Have you both rested?

Mr. Templeton: Yes.

Mr. Maddox: We rest.

The Court: I am willing to hear from counsel but I want to tell you what I am thinking before you argue. [73]

I think the evidence is so conflicting and so uncertain that there is only one thing the court can rightfully hold that one died before the other. It is one of those cases where you can't determine the exact time. There is such a conflict in the evidence and the circumstances are such that both parties died so closely together, at least the evi-

dence doesn't convince me one way or the other. I wouldn't want to find either way. Now, that is the way I feel about it. I will listen to your argument.

Mr. Templeton: I would like to argue the point.

The Court: You may do so.

(Argument reported but not transcribed.)

The Court: I will make a finding of fact that it is one of those accidents in which both were killed simultaneously. It is difficult to determine which one breathed the last.

Mr. Maddox: Do you want me to prepare findings?

The Court: Submit them to counsel under the rules for his approval.

(Whereupon at 3:30 o'clock p.m. the above-entitled matter was concluded.)

[Endorsed]: Filed December 23, 1954.

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[Title of District Cause and Cause.]

The deposition of Doctor Gustavo Arevalo, taken on behalf of Sarah E. Padre in Room 110, DeAnza Hotel, in the City of Calexico, County of Imperial, State of California, commencing at approximately 10:10 o'clock a.m. on the 27th of February, 1954, before M. Gayle Amaek, a Notary Public within and for the County of Imperial, State of California, pursuant to notice.



## DEPOSITION OF GUSTAVO AREVALO

Appearances: For S. D. Hahn: Edward Carter Maddox, Attorney at Law. For Sarah E. Padre: Templeton and Miller, Attorneys at Law, by Harry E. Templeton. [1\*]

## DOCTOR GUSTAVO AREVALO

a witness produced on behalf of Sarah E. Padre, being first duly sworn to state the truth, the whole truth and nothing but the truth, testified on his oath as follows:

## Direct Examination

Q. (By Mr. Templeton): Will you state your full name?           A. Gustavo Arevalo.

Q. You are a doctor?           A. Yes.

Q. What is the extent of your medical education, Doctor? Where were you educated, your medical education?           A. Mexico City.

Q. And in what school?

A. Medical school, Medical Army School, Escuela.

Q. And, Doctor, did you graduate in medicine?

A. Yes, sir.

Q. From that school. What degree, what medical degree [2] do you hold?

A. Medicine, Doctor, no.

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Dr. Gustavo Arevalo.)

Q. That is the equivalent of what in America we call the "MD"? A. Yes.

Q. And, Doctor, how long have you been practicing medicine? A. Twelve years.

Q. And where have you been practicing?

A. Mexico City.

Q. And have you been practicing——

A. (Interrupting) Also in Mexicali.

Q. In Mexicali?

A. Yes. The last seven years.

Q. And, Doctor, what is the nature of your practice, is it a general practice?

A. General practice.

Q. Or is it specialized? A. General.

Q. General practitioner. Doctor, on or about the 19th of April, 1953, did you hold any official position with the government of the Territory of Baja California? A. Yes.

Q. What was that position?

A. Like forensic medicine, no.

Q. Well, is that or is it not similar to the autopsy [3] surgeon in the United States?

A. Yes.

Q. Doctor, in that official position with the Government what are your duties?

A. Perform the autopsies to the bodies.

Q. In that official capacity did you, on or about the 19th of April, have occasion to view the bodies of Young D. Hahn and Herbert Huxley Hahn?

A. Yes.

Q. And where did that take place?

(Deposition of Dr. Gustavo Arevalo.)

A. In Mexicali hospital in the morgue.

Q. And did you perform the autopsies upon the body of Young D. Hahn and upon the body of Herbert Huxley Hahn? A. Yes.

Q. And when did you examine those bodies?

A. On——

Q. (Interrupting) Well, I mean do you know the date? A. The 19th of April, no.

Q. April 19th of 1953? A. Yes.

Q. Doctor, what did you find to be the then condition of the body of Doctor Young D. Hahn?

A. The cause of the death, you say?

Q. No, what was the condition of the body? In other words, what injuries did you find, if any?

A. He got a fracture of the skull and a big contusion [4] of the thorax.

Q. Now, by "thorax" keep in mind, Doctor, that we are laymen and we don't understand some of the medical terms. By "thorax" what do you mean?

A. The chest, no. A chest injury.

Q. And what was the nature of the head injuries that he sustained?

A. Well, was fracture of the base of the skull, no.

Q. Well, was the skull, was it broken open or——

A. (Interrupting) Closed fracture, no open wound.

Q. And were there any injuries to the face?

A. Yes.

Q. And what is the nature of the injury to the face? A. Contusion.

(Deposition of Dr. Gustavo Arevalo.)

Q. And was that severe or not?

A. Well, severe because they caused the death, you know.

Q. And what other injuries, other than what you have described, did you notice on the body of Doctor Young D. Hahn?

A. Big hemorrhage.

Q. And where—was that internal hemorrhage?

A. Internal hemorrhage.

Q. Did you, as the result of your examination of the body of Doctor Young D. Hahn, formulate an opinion as to the cause of his death? [5]

A. Yes.

Q. What did you determine was the cause of his death?

A. Acute anemia for internal hemorrhage.

Q. Did you formulate an opinion as to the approximate time that Doctor Young D. Hahn had been dead when you saw the body?

A. Well, just approximately.

Q. What was your opinion?

A. Well, he died about, oh, eight o'clock, eight p.m.—no, no, this was later. About ten. I don't remember exactly the hour, you see.

Q. Well, Doctor, in order to refresh your memory I can show you the autopsy report, if that will refresh your memory.

By Mr. Maddox: Just a minute, Mr. Templeton, before we go into the autopsy report. Are you having him to testify as a witness who does not have present recollection?

(Deposition of Dr. Gustavo Arevalo.)

By Mr. Templeton: Yes.

By Mr. Maddox: He is going on past recollection?

By Mr. Templeton: He is going to refresh his memory if he desires to refresh his memory. I want to show him for the purpose of doing so, this autopsy report.

By Mr. Maddox: I think some foundation should be laid.

Q. Doctor, do you recall at the present time what the time of death was as given in your autopsy report?

A. I perform lots of autopsies, I couldn't keep in [6] mind the exact hour of every one, you see.

Q. And in order to refresh your memory, would it be necessary that you refer to the autopsy report that you made?

A. Well, whatever the report says, that is what it was copied on that day, you see.

Q. Well, Doctor, I show you a document here called, "Certificado De Autopsia," and I will ask you if you recognize—this is a photostat—and I'll ask you if you recognize that?

By Mr. Maddox: Before you show him that, I have a copy of it here, have we established that he does not have present memory?

By Mr. Templeton: I think he said he did not. Doctor, do you remember at the present time what your report was as to the time of death, approximate time of death of the party? Do you have a present memory of that as to what the time was?



(Deposition of Dr. Gustavo Arevalo.)

A. It was night time, but I don't remember the exact hour, could be about ten o'clock in the night.

Q. Doctor, I show you, ask you if you recognize this document?

By Mr. Maddox: Now, before you show him the document, Mr. Templeton, let's find out when this document was made and the circumstances, before we use that to refresh his memory.

Q. Doctor, did you make a certificate of the autopsy [7] record for your governmental offices in Mexicali with respect to each of these parties?

A. Did I make what?

Q. Did you make an autopsy report?

A. Yes.

Q. And when was that autopsy report—well, first, when did you make the autopsy itself?

A. Well, usually we saw the bodies the next day of some accident, you see.

Q. And then is the report written up immediately, or is it—

By Mr. Maddox: (Interrupting) I'll object to that as not being responsive. He gave his usual pattern. I wish to get a direct answer to this particular report.

Q. Doctor, did you make this report up at the time when you first viewed the body, or did you make it up at a subsequent time?

A. I write the report the same day.

Q. All right. Doctor, I show you this document and ask you if you recognize this document?

A. Yes.

(Deposition of Dr. Gustavo Arevalo.)

Q. And what is it? A. Autopsy report.

Q. That is a photostatic copy of the autopsy report? A. Yes.

Q. Now, I will ask you, doctor, if you can refer to [8] that report and refresh your memory and tell me, if you can, the approximate time, in your opinion, that Doctor Young D. Hahn passed away?

A. (Indicating) Right here, April 19 at twenty hours.

Q. And this is a true copy of the report as made by you? A. Yes.

Q. And is your signature thereon?

A. Right here.

Q. I will offer this for the purpose of identification. Mr. Maddox, you have a copy of it and may I have it marked?

By Mr. Maddox: Yes.

(Document was so marked.)

By Mr. Maddox: Now, may I take him on voir dire on the use of this document as to the foundation for it?

By Mr. Templeton: As to the foundation only?

By Mr. Maddox: Yes.

By Mr. Templeton: Go ahead.

#### Voir Dire Examination

Q. (By Mr. Maddox): Doctor, you said you made this document the same day as you made the autopsy, is that right? A. Yes.

Q. You made your report out the same day?

A. The same day, yes.

(Deposition of Dr. Gustavo Arevalo.)

Q. How close in time was it, how long after the actual [9] autopsy was it when you made the document? A. How long?

Q. Yes. A. The next day.

Q. The next day? A. Yes.

Q. You performed the autopsies on the bodies on one day, then the following day you made the report? A. Yes.

Q. Then you do not mean you made the report the same day as the date of the autopsy?

A. We perform the autopsy, you see——

Q. Yes.

Q. And keep the record. And then the lawyer call and ask for the report and we send it, see, that is the usual way we do.

Q. Well, I'm not asking the usual way, I am trying to see what you can recall about this report and this particular autopsy. Now, is it your testimony that you made this report the day after the day that you made the autopsy? A. Yes.

Q. And did you write it up that day in the same form as it appears here? A. Yes.

Q. Did you sign it on that same day?

A. Signed it the next day. [10]

Q. The day after you performed the autopsy?

A. Yes.

Q. Now, you say you performed the autopsy on the 19th? A. 19.

Q. And you wrote the report up on the 20th?

A. 20th or 21st, yes, because I think it was

(Deposition of Dr. Gustavo Arevalo.)

Sunday. I don't remember, it was a holiday, you know.

Q. It was a holiday? A. Yes.

Q. And the same day you wrote it up you also signed it that day? A. Yes.

Q. Was it signed by anyone else other than yourself? A. Yes.

Q. Another doctor is also required to sign it?

A. Yes.

Q. Who was that doctor?

A. Doctor Basquez Gomez.

Q. And you say it was on a Sunday?

A. Yes.

Q. When you actually made this?

A. Of course, I cannot remember, we performed lots of autopsies, you see.

Q. Yes, of course. Now, did you sign it before any witness or Notary Public, do you recall that?

A. Yes. [11]

Q. You did? A. Yes.

Q. Still this was done on the same—on the day after you made the autopsy? A. Yes.

Q. Now, I want you to look at this document and observe the date on it, the date that immediately precedes your signature. What date does it say there? A. 22 of April, 1953.

Q. Is that the date you actually made this up?

A. Yes.

Q. Then that is the day following the day that you made the autopsy, is that not true?

A. We make the autopsy April 19.

(Deposition of Dr. Gustavo Arevalo.)

Q. Yes, but you said the day after you made the autopsy——

A. (Interrupting): Well, you are a lawyer, no?

Q. Well, just a minute, answer my question. Listen to my question carefully now. It is your testimony that you made the autopsy one day and you made the report the following day?

A. Yes.

Q. That is true. Now, the date on the report is April 22nd, that is the date that you signed this document? A. Yes, whatever——

Q. (Interrupting) That is the date you prepared it? [12-A]

A. Whatever it say here, that is what happened.

Q. That is what happened. All right. Then that means you made the actual examination of the body on the 21st, does it not? A. Yes.

Q. All right. Now, at the time you performed the autopsy on the 21st, did you make any notes, any pencil notes? A. Yes.

Q. Any kind of notes as to what your discoveries were? A. Yes.

Q. Do you have those notes with you?

A. No, we just, you know, just like the memorandum, no, you know what I mean.

Q. Yes. A. That's all.

Q. What did you do with those notes?

A. We throw it away, we don't need it.

Q. How long did you keep those notes?

A. Oh, I would say a week, no.

Q. And at the time you made this autopsy re-



(Deposition of Dr. Gustavo Arevalo.)

port what did you rely on for the information that you have here? Were you relying on your memory?

A. No, no.

Q. What did you rely on?

A. The memorandum papers. [12-B]

Q. You relied on the notes? A. Yes.

Q. How many autopsies did you do on the 21st?

A. Oh, I could not remember.

Q. You don't know whether you did just those two, or whether you did more than two?

A. Maybe just two.

Q. You say maybe just two? A. Yes.

Q. You are not sure? A. I am not sure.

Q. Did you make the autopsy personally, yourself? A. Yes.

Q. Or did the other doctor make it?

A. Me, personally.

Q. You made it personally? A. Yes.

Q. Did anyone assist you in making this autopsy? A. Yes.

Q. Who was that?

A. Some fellow that helped over there.

Q. Is he a doctor?

A. No, he just takes care of the bodies, you know.

Q. I see. Did Doctor Gomez help you in any way? A. No.

Q. Was he present at the time this autopsy was made? [13] A. Yes.

Q. Was he in the same room with you?

A. We are both legal doctors, you know.

(Deposition of Dr. Gustavo Arevalo.)

Q. Yes. That was not my question. My question was whether or not Doctor Gomez was in the same room with you at the time you made the autopsy?

A. No.

Q. He was not? A. No.

Q. Did he assist in any way in the making of this autopsy?

A. There is two doctors, you know.

Q. Yes.

A. And one takes one week and one takes the other one.

Q. Yes. A. So we both signed the papers.

Q. I see. Now, his signature does not indicate—does not mean that he was actually present at the time of the autopsy was made? A. No.

Q. Do you know whether or not Doctor Gomez inspected the bodies or examined the bodies at all?

A. I don't know.

Q. You don't know whether he did or not. And your estimate—strike that. No other questions. [14]

Direct Examination—(Continued)

Q. (By Mr. Templeton): Doctor, were you requested to rush this autopsy through so that the bodies could or could not be taken to the United States? A. Yes.

Q. And who talked to you about that, about getting the autopsies through?

A. Somebody in the Consulate.

Q. And did you at any time talk to this gentleman here (indicating)? A. No.

(Deposition of Dr. Gustavo Arevalo.)

Q. Will you tell me what his name is?

By Mr. Maddox: William Hahn.

Q. And, Doctor, was the autopsy performed—do you know whether or not it was or was not a holiday upon which the autopsy itself was performed? A. I think it was a holiday.

Q. Well, by holiday do you mean—

A. (Interrupting) A Sunday.

Q. A Sunday? A. A Sunday.

Q. Then I call your attention to the calendar for the year 1953. March 18th is on a Saturday—I mean, April 18th is on a Saturday and April 19th is on a Sunday. A. Yes. [15]

Q. Now, with reference to the calendar, does that refresh your memory as to the date that you actually made the autopsy itself?

A. I think I made it Sunday, the 19th.

Q. And the report, then, was written up by you on the 22nd of April? A. Yes.

Q. Doctor, did you also at that time view the body of a child, Herbert Huxley Hahn?

A. Yes.

Q. And did you determine what, if any, injuries that he sustained?

A. Well, it is in the report, too.

Q. Well, do you recall exactly what the injuries were that he sustained? Do you have an independent recollection of it or must you refer to the autopsy report?

A. I'd have to refer, because I don't remember, you know.

(Deposition of Dr. Gustavo Arevalo.)

Q. All right, Doctor, I show you a document and I will ask you if you can tell me what this document is?

A. That is an autopsy report, too.

Q. Is that a photostat of the autopsy report you made in regard to the body of Herbert Huxley Hahn?

A. Yes.

Q. And that bears your signature?

A. Yes. [16]

Q. And dated April 22nd of 1953?

A. Yes.

Q. Doctor, now——

By Mr. Maddox: (Interrupting) I'd like to question him on this one also.

Q. Let me finish first, I will question him on it. Doctor, was this autopsy performed on the same date as the autopsy was performed on the body of Doctor Young D. Hahn?

A. Yes.

Q. And under the same conditions?

A. Yes.

Q. And were the same parties present?

A. Yes.

Q. That you have testified were present when you performed the autopsy on Doctor Young D. Hahn's body?

A. Yes.

Q. Now, Doctor, will you refer to this and tell me—if you need to refer to it to refresh your memory.

By Mr. Maddox: Before you show it to him, Mr. Templeton, I'd like to question him on it.

By Mr. Templeton: All right.

(Deposition of Dr. Gustavo Arevalo.)

Voir Dire Examination

Q. (By Mr. Maddox): Now, Doctor, did you prepare this report in the same fashion as you prepared the other report on your examination of the body of Doctor Young D. Hahn? [17]

A. Yes.

Q. By that I mean did you make notes at the time you made the examination of Herbert's body?

A. Yes.

Q. And you later used those notes as basis for your report? A. Yes.

Q. And does this report contain everything that was in your notes? A. Yes.

Q. Are there any other findings that you relied upon other than what is in your report?

A. No.

Q. This is your complete examination?

A. Yes.

Q. Now, I will call your attention to the date on which this is signed. What is the date as you see it there? A. 22 of April.

Q. 1953? A. Yes.

Q. And that is the date on which this report was actually made up? A. Yes.

Q. Now, did you also make this report the day after you actually made the examination?

A. Yes. [18]

Q. You made the examination one day and you made the report the following day? A. Yes.

Q. Now, I think the bodies were brought into



(Deposition of Dr. Gustavo Arevalo.)

the hospital about the 18th or the 19th, were they not?      A. Yes.

Q. Now, the bodies were actually there for two or three days, from the 18th or 19th, up until the 21st, before you actually made the autopsies, is that not true?      A. No, they came the 18th.

Q. Yes.

A. And I performed the autopsies the next day, the 19th, was a holiday, the Sunday.

Q. Well, you said you performed your autopsy the day before—look back to your signature as to the date here, the 22nd. Now, you said you actually—you are sure this date is correct and your signature is correct, are you not?      A. Yes.

Q. You are sure, then, it was on the 22nd when you made this report?      A. Yes.

Q. Is that your writing there, the 22nd?

A. Yes.

Q. That is your own handwriting?

A. I put the date of the day that I made the document.

Q. Made the document? [19]      A. Yes.

Q. Yes. And you made the document the day after you made the examination?

A. I made it the 22nd.

Q. Yes, I understand that you made it on the 22nd. And at the time you made the document your memory of the autopsy was still fresh in your mind, was it not?      A. Yes, of course.

Q. You had just done the autopsy the day before?      A. Yes.

(Deposition of Dr. Gustavo Arevalo.)

Q. On the 21st? A. Yes.

Q. Now, the bodies had been there in the hospital for at least two days at that time, had they not? A. Yes.

Q. They were there for at least two days?

A. I keep the note of the autopsy, you know, until the lawyer in, until the administrator, policia.

Q. You say the administrator of the police?

A. Yes.

Q. All right. It is your testimony that you made this document, then, on the day that you have written there, the 22nd? A. Yes.

Q. That you made the autopsy just the day before? A. The 19th. [20]

Q. On the 19th? A. Yes.

Q. Well, the 19th, now, is not the day before the 22nd, Doctor?

A. Well, I don't know, of course, it is not.

Q. But you did say the bodies had been there for at least two days?

A. That was a special case, you see.

Q. Do you actually remember which day you actually made the autopsy? A. The 19th.

Q. Or not? A. The 19th.

Q. Do you have a record to show that?

A. Oh, no.

Q. You have no record to show that?

A. No.

Q. You are depending on your memory now?

A. No, I take notes.

Q. Well, do you have those notes?

(Deposition of Dr. Gustavo Arevalo.)

A. What it says here, April 19.

Q. Yes. A. Yes.

Q. Now, is the date and time that you have here, is that date and time you actually made the autopsies? A. Let me see. [21]

Q. You refer to April 19, which is on a Sunday?

A. Yes.

Q. April 19th at 23 hours? A. Yes.

Q. Now, that is the date you actually made the autopsy, is that right?

A. No, I made the autopsy the April 19.

Q. Well, that is the date that is written in here, is that what you are referring to?

A. That is the date and hour of the death here.

Q. Which is April 19.

A. April 19. Of course, this is approximate, see, it is not sure, you see.

Q. Yes. Well, you haven't any record anywhere of the date upon which you made the autopsy, do you? A. No.

Q. Did you write that down anywhere?

A. Yes.

Q. Where did you write it?

A. Note paper.

Q. And you have destroyed those papers?

A. Yes.

Q. You have no present memory of what you wrote on that paper now, do you? A. No.

Q. You have to refer to this document to refresh your memory? [22] A. Yes, of course.

Q. Then, you are not sure, absolutely sure of

(Deposition of Dr. Gustavo Arevalo.)

the date on which you made the autopsies, are you?

A. Well, I am sure because I am see the dates here, you see.

Q. Well, you did say you had made it the day before this document was signed?

A. Well, this is a special case, you see, because they called me in Sunday; I usually don't do nothing, you see.

Q. Yes.

A. But they call that it was somebody they want to take to the United States.

Q. Yes.

A. And they want to have the autopsy.

Q. What time of day was it when they called you? A. Oh, I don't remember.

Q. What time of day was it when you made the autopsy? A. I don't remember.

Q. Was it in the morning or in the night?

A. I think it was night.

Q. It was dark?

A. Yes. I don't remember for sure, you see.

Q. And you are sure when you have April 19th at 23 hours on this document, referring to Young D. Hahn—or is it Herbert Hahn. 23 hours as to Herbert Hahn, that date and time does not refer to the time the autopsy was made? [23]

A. No.

Q. That referred to the time of death?

A. Of death.

Q. According to your opinion? A. Yes.

Q. Then, it is your opinion that the death oc-

(Deposition of Dr. Gustavo Arevalo.)

curred on the same day as you made the autopsy?

A. Yes.

Q. And that was on a Sunday? A. Yes.

Q. It was your impression that the death had occurred just a few hours before the autopsy, would you say? A. Yes.

Q. Just a few hours before you actually examined the body? A. After, not before.

Q. I mean death had occurred a few hours before you made the autopsy? A. Yes.

Q. Were the bodies still warm? A. No.

Q. They were not warm? A. No.

By Mr. Maddox: All right. [24]

Direct Examination—(Continued)

Q. (By Mr. Templeton): Doctor, were you requested by—I understand you testified that you were requested by the American Consul to hurry your work up on the autopsies so that they could take the bodies back to the United States, is that correct? A. Yes.

Q. And you are sure that that was done on Sunday, April 19th? A. Yes.

Q. I will offer this, I mean, I ask this be marked for identification.

(The document was so marked.)

Q. Now, Doctor, referring to the report, the autopsy report which you have identified, will you refer to that report, then, if you must do so—must you refer to this report to refresh your memory as to what the cause of death was?



(Deposition of Dr. Gustavo Arevalo.)

A. Right here.

Q. No, I mean, must you refer to the report? You have to refer to the report to refresh your memory?

A. Of course, yes.

Q. All right. Now, will you refer to the report and tell in your opinion what was the cause of death of Herbert Huxley Hahn?

By Mr. Maddox: Now, let me interpose an objection. [25] We can go ahead, but I want the record to show that I am going to object to any testimony given by him based on the use of that report on the ground improper foundation has been laid.

By Mr. Templeton: And it is understood that we are making all objections because of the fact that we will not be able to——

By Mr. Maddox: And have them ruled on.

By Mr. Templeton: And have them ruled on by the Court.

By Mr. Maddox: Yes. Go ahead.

A. Acute anemia from an internal hemorrhage.

Q. (By Mr. Templeton): Doctor, what was the condition of the body of Herbert Huxley Hahn when you first saw it?

A. How was its condition?

Q. Yes, what injuries were you able to see visually? In other words, were there any bruises on the body, on the face?

A. Contusions, a contusion in here (indicating).

Q. In the head?

A. Front, here (indicating).

Q. On the front of the cranium?

(Deposition of Dr. Gustavo Arevalo.)

A. Yes, contusion.

Q. And what else did you observe with regard to his body?      A. Externally, you say?

Q. Yes. [26]      A. Nothing else.

Q. Doctor, were there any cuts on the body that you observed?      A. No.

Q. Was his jugular vein cut at all?

A. Jugular vein?

Q. Yes.      A. No.

Q. And the hemorrhage that you testified to, was that internal hemorrhaging?

A. Internal hemorrhage.

Q. Doctor, as the result of your examination of the body of Herbert Huxley Hahn, the child, did you form an opinion as to the cause of his death?

A. Yes.

Q. What was that cause of death?

A. Acute anemia from internal hemorrhage.

Q. Did you formulate an opinion as to the approximate time that Herbert Huxley Hahn had passed away?

A. Well, it is here, too, right approximately at 23 hours.

Q. Doctor, from examination of the two bodies were you able to—do you have an opinion—withdraw that question. Doctor, you have testified that in your opinion Doctor Young D. Hahn passed away at April 19th at 20 hours, and that the boy, Herbert Hahn, passed away on April 19th at 23 hours? [27]      A. Yes.

(Deposition of Dr. Gustavo Arevalo.)

Q. What is the medical basis of your opinion as to the difference in the time of their deaths?

A. Well, especially the rigor mortis.

Q. In other words, the condition of rigor mortis?

A. Yes.

Q. Of the two bodies?

A. And the decomposition of the bodies, too.

Q. Was there anything else?

A. Besides—what do you say?

Q. Well, besides those two things, the decomposition of the bodies, the state of decomposition, and the state of rigor mortis, was there anything else upon which you based the difference of three hours in the time of their respective deaths?

A. Well, asking the police—the body of the Doctor came later, came first to the boy, you know.

Q. The boy came in first?           A. Yes.

Q. All right, Doctor, you—I don't quite understand your answer. The question was, other than the state of decomposition of the bodies and of the condition of rigor mortis, was there any other reason that you determined that Doctor Young D. Hahn had passed away about three hours prior to the boy?

A. Of course, my appreciation is all in the medical [28] way, you know.

Q. That's right.

A. Just the rigor mortis, decomposition, the temperature of the body, the nature of the wound.

Q. And were the wounds sustained by Doctor Hahn more severe or less severe than the boy's?

(Deposition of Dr. Gustavo Arevalo.)

A. Oh, more severe, yes.

Q. Well, to what extent were they more severe?

A. Well, the hemorrhage, bigger.

Q. And were the contusions any different on the body of Doctor Hahn?      A. Yes.

Q. Than they were upon the boy?

A. Yes.

Q. What was the difference?

A. He had a big open wound in the head.

Q. A big open wound in the head?

A. Yes.

Q. And did the boy have any open wounds?

A. No.

Q. I mean to the head?      A. No.

Q. Doctor, from the injuries which you ascertained were upon the body of Doctor Young D. Hahn, do you have an opinion as to whether or not those injuries would have or would not have caused immediate death? Do you have any [29] opinion on that?      A. No.

By Mr. Maddox: Doctor, would you please answer "yes" or "no", rather than shake your head, so it can be written down?

A. I said "no".

Q. In other words, you did not know whether Doctor Hahn died instantly or some time after the accident?      A. No.

Q. Doctor, in your capacity as Autopsy Surgeon, do you know whether or not it is or is not permissible for bodies of persons who have been injured

(Deposition of Dr. Gustavo Arevalo.)

on the highway to be moved to the hospital before the Ministerio Publico sees the body?

A. Well, I don't know——

By Mr. Maddox: (Interrupting) I will object to that as a conclusion.

A. I don't know the law, you know, I am no policeman.

By Mr. Templeton: You may cross-examine.

### Cross Examination

Q. (By Mr. Maddox): Now, going back to your examination of the boy, Doctor? A. Yes.

Q. I think you testified when you examined him you found—let's see—you found contusion on the head? [30] A. Yes.

Q. The front of the head? A. Yes.

Q. What do you mean by "contusion"?

A. A contusion is a—well, a contusion is a contusion, you know. You know, a contusion is a—when you hit someone, it is no open wound, you know.

Q. I see. A contusion is not the same thing as a fracture, is it? A. Oh, no, of course not.

Q. A fracture means that the bone is broken?

A. Break.

Q. A break in the bone? A. Yes.

Q. A contusion is an injury to the skin, is it not? A. Yes.

Q. Now, when you examined the body of the boy you found a contusion? A. Yes.



(Deposition of Dr. Gustavo Arevalo.)

Q. And, Mr. Templeton asked you what else you found and you said nothing else, is that right?

A. Not open, no, a hemorrhage, you know.

Q. The hemorrhage was internal, was it not?

A. Internal, yes.

Q. Yes. So you didn't see anything else when you examined him? [31] A. Externally?

Q. Yes. A. No, just the contusion.

Q. I see. What does the word "contuding" mean, do you know? I ask you to refer to your report there? A. Contuding?

Q. Refer to your report on Herbert Huxley Hahn, and you have——

By Mr. Templeton: (Interrupting) Which page, Counsel?

Q. Is this the boy? A. Yes.

Q. Do you have something called "external appearance"? I don't know the translation of it.

A. Let me see.

Q. Right after identification, right here (indicating). A. Yes.

Q. Now, that is "external appearance," is it not?

A. Yes.

Q. Now, under that you have——

A. (Interrupting) You say this is contusion?

Q. No, contuding trama of the front perietal region. A. Yes.

By Mr. Templeton: Counsel, I am going to object to that, as you are reading from the translation and not from the original document from which he is testifying.

(Deposition of Dr. Gustavo Arevalo.)

Q. Well, he has the original document and I am asking [32] him to explain what is the meaning.

A. Well, in common words, "hit here".

Q. Now, look over further in your report. Don't you have on the report a fracture at the base of the skull?

A. Yes, right here.

Q. Right here. So you did find a fracture of the skull on the boy?

A. When we opened the skull up, no.

Q. That fracture was not obvious on the external examination?

A. Oh, no, it is in the base of the cranium, you know.

Q. I see.

A. It says here the base of the cranium.

Q. Yes, I know it is the base of the cranium, and that was not obvious until you actually cut through the skin?

A. No.

Q. It was not a compound fracture?

A. No.

Q. When you examined his chest, refer to your report and tell me what you found upon examination of his chest, thorax, thoracic examination?

A. Same thing, contusion of the thorax.

Q. And what is a thorax?

A. The chest.

Q. And did you—when you examined the skull of the boy after you cut through the skin and examined the skull, [33] you found a hemorrhage in the basal portion of his skull, did you not?

A. Yes.

(Deposition of Dr. Gustavo Arevalo.)

Q. So you found hemorrhage in his head as well as internally in his body? A. Yes.

Q. Now, then, you give the cause of death. Is it not possible that the hemorrhage in the basal region of the skull and the fracture of his skull could have contributed to his death?

A. Yes. Of course, yes.

Q. Is it not possible that that type of injury with the resulting hemorrhage can cause immediate death? A. Well, no.

Q. It is not possible?

A. Well, it is possible, everything is possible in medicine, you see.

Q. Well, that is all I am asking. It is possible that immediate death can result from that type of injury?

A. Yes. It all depends where is the lesion, you know what I mean, the wound or the trama.

Q. Yes. Now, you said that you based your opinion as to the time of death on, number one, the condition of rigor mortis; number two, on decomposition, and then the nature of the wound and temperature? A. Yes. [34]

Q. Those were the things you based your opinion on? A. Yes.

Q. Do you know what the temperature of the body was at that time? A. No.

Q. Did you make a note of the temperature?

A. No.

Q. Did you take the temperature of the bodies?

A. No.

(Deposition of Dr. Gustavo Arevalo.)

Q. You did not?           A. No.

Q. Then the temperature of the body was not a basis of——           A. (Interrupting) No.

Q. I am talking about the temperature.

A. No. Well, if you touch the body it is cold, or it is a little warm, you know, the natural temperature of the body.

Q. You are depending on the feeling through your own hands, not through any clinical measuring device?           A. No.

Q. All right. Now, you mentioned the state of decomposition of the bodies as the basis for your opinion?           A. Yes.

Q. Will you check the report which you have on Herbert Hahn and tell me what the report shows as to the decomposition [35] on Herbert Hahn?           A. No decomposition.

Q. Shows no decomposition?           A. No.

Q. I think it says, "no signs of decomposition," is that right?           A. Yes.

Q. Now, check the decomposition on Doctor Young D. Hahn and tell me what that says?

A. No signs of decomposition.

Q. No signs of decomposition on either one, is there?           A. No.

Q. Then we can rule out decomposition as the basis for your opinion, can we not?

A. Well, yes.

Q. There was no decomposition on either one?

A. No.

Q. Now, you referred to the nature of the

(Deposition of Dr. Gustavo Arevalo.)

wound. You say that you have no memory except what is recorded here as to your findings, is that true?      A. Pardon me.

Q. You have no independent memory of what you found except what you have written down here?

A. Yes.

Q. Now, tell me what you found as to the injury to the head of Doctor Hahn? Do you know of a basal fracture of the skull? [36]

A. Listen, you got the explanation about this. Trama.

By Mr. Templeton: Do you want that? Trama of the parietal region?

A. This kind of lesion, you see, here you got a bulb here, you know.

By Mr. Templeton: Referring to the back of the head.

Q. Are you referring to a portion of the brain?

A. Yes.

Q. Yes, go ahead. Well, you found the basal fracture of the skull, did you not?      A. Yes.

Q. And you found subdural hemorrhage?

A. Yes.

Q. You found the hemorrhage after you had cut through the skin?      A. Yes.

Q. And you also found a fracture of the skull and subdural hemorrhage in the boy?

A. Yes.

Q. You found a trama of the thorax?

A. Yes.

Q. In the father?      A. Yes.



(Deposition of Dr. Gustavo Arevalo.)

Q. And trama of the thorax and contuding trama in the son?      A. Yes.

Q. And you found internal hemorrhage in the case of [37] each?      A. Yes.

Q. Now, are those the findings that indicate to you the different times of death?      A. Yes.

Q. Doctor, did you—answer me this: Did you examine these bodies independently and form an opinion as to the time that each one had been dead, or did you just examine them in trying to determine which one might have died first?

A. No, I just examined like some other people, you see.

Q. Yes. And did you examine each one independently and form an independent opinion as to the time he had been dead?      A. Yes.

Q. And because of the temperature of the bodies you felt that death had only been a matter of hours?      A. Yes.

Q. And you don't know what time of day it was when you made this examination?

A. No, sir, night I tell you, I don't remember, night or morning, I don't remember.

Q. You don't remember. I see.

A. It is almost a year.

Q. Yes. And when you first saw the bodies, they were there at the hospital, were they not, they had already been brought there? [38]      A. Yes.

Q. And this was on the 19th?      A. Yes.

Q. A few minutes ago Mr. Templeton asked you about the contusions on the face of Doctor Hahn

(Deposition of Dr. Gustavo Arevalo.)

and he asked you were they severe and you said, yes they were severe because they caused the death. Now, is it your opinion that the death of the Doctor was caused by injury to his face?

A. No, to the skull.

Q. To the scalp and to the skull?

A. Yes.

Q. And I think your report says that his death was caused by acute anemia from internal hemorrhage? A. Yes.

Q. Well, does that not refer to the injury to the chest area?

A. Yes, but both, he has a big subdural hemorrhage.

Q. I see. A. Yes.

Q. And so the cause of death of each the father and the son was contributed to by the injuries to his head? A. Yes.

Q. How long have you been making autopsies, Doctor? A. Six years.

Q. Six years in Mexicali? A. Yes. [39]

Q. Did you make or perform autopsies when you were in Mexico City? A. Yes.

Q. And for how long did you perform autopsies there? A. Two years.

Q. You received your degree in medicine in Mexico City? A. Yes.

Q. What is the name of the school?

A. Medical Army School in Mexico City.

Q. Medical Army School? A. Yes.

Q. How many years were you in training there?

(Deposition of Dr. Gustavo Arevalo.)

A. Six years.

Q. And when did you receive your degree?

A. 1940, December 5, 1940.

Q. And what did you do after that?

A. Intern.

Q. Where did you intern?

A. Mexico City Military Hospital.

Q. For how long? A. One year.

Q. Then after that what did you do?

A. I came to one army regiment.

Q. Did you go into practice at that time?

A. Yes.

Q. After six years medical school and one year internship? [40] A. Yes.

Q. Prior to your six years medical school what training had you had?

A. Well, training in surgery in Saint Mary's Hospital in Tucson, Arizona.

Q. Before you went to medical school you had training in surgery? A. Yes.

Q. In Tucson, Arizona? A. Yes.

Q. At Saint Mary's Hospital? A. Yes.

Q. Had you ever been to medical school before that? A. To the medical school?

Q. Had you ever been to medical school before you had your training in Tucson?

A. Postgraduate course in Mexico City.

Q. You had your training in Tucson before you trained in Mexico City? A. No, after.

Q. Well, you must have misunderstood my question. My question was, what training did you have

(Deposition of Dr. Gustavo Arevalo.)

before you entered medical school in Mexico City?

A. What training?

Q. Yes. [41]

A. I went to the high school in Mexico.

Q. To high school?

A. And then to the University of Mexico.

Q. Well, you had training at the University of Mexico before you entered medical school?

A. It is an operation in here in the United States, you go to grammar school first, no?

Q. Yes.

A. Then you go to high school, no?

Q. Yes. A. Then you go to college?

Q. Right.

A. Then you go to the professional school?

Q. That's right.

A. Same thing in Mexico.

Q. Did you go to the University of Mexico for college work prior to entering medical school?

A. Yes.

Q. And did you get a degree from the University of Mexico? A. Yes.

Q. What is it called?

A. We call it Bachelor.

Q. That is the same as a Bachelor degree here?

A. Yes.

Q. So you have a Bachelor degree, then you have a [42] medical degree? A. Yes.

Q. Now you are presently employed as an Autopsy Surgeon, are you not?

(Deposition of Dr. Gustavo Arevalo.)

A. Not any more, I resigned about a month ago.

Q. But you were on the 19th of April of last year? A. Yes.

Q. And that is in Mexicali? A. Yes.

Q. I want to get closer, if I can, Doctor, to the time of day when you made this examination. Now, you say you are sure it was on a Sunday?

A. Yes.

Q. Do you remember anything else you did on that day? A. No.

Q. And according to the date that document was signed, it was on a Wednesday when you actually prepared the autopsy report? A. Yes.

Q. Now, Doctor, it is three days from Sunday to Wednesday. You said a few minutes earlier that you made the autopsy report on just the day before you—I mean, you made the actual autopsy examination on just the day prior to signing this paper?

A. Yes.

Q. I want to ask you this: It is your usual custom to [43] write up your report the day after you make the actual examination? A. Yes.

Q. And it was your first testimony that you did actually write it up the day after you made the examination, isn't that true? A. Yes.

Q. But now you change your story and say you made the examination on a Sunday and wrote it up three days later. Are you sure of that?

A. I don't remember, it was a long time ago.



(Deposition of Dr. Gustavo Arevalo.)

Q. Yes. It is quite possible that you made this examination on the 21st, is it not? A. No.

Q. You are sure it was on a Sunday?

A. Yes.

Q. But you can't remember anything else you did on that day? A. No.

Q. Can you remember whether or not you made this examination before you ate dinner that evening, or after dinner?

A. Oh, I don't know, I couldn't tell you.

Q. You couldn't tell?

A. No, I don't remember it.

Q. You do remember it was at night?

A. Yes. [44]

Q. Do you know whether or not it was before midnight or after midnight?

A. No, I don't remember.

Q. Did you talk with anyone on that day, Doctor, anyone who—strike that. I think Mr. Templeton asked you, did you see Mr. Hahn here on that day?

A. No.

Q. You didn't see him?

A. No. That is the first time I saw this gentleman (indicating).

Q. Did you talk to anyone that may have come down from Los Angeles that day to see about the accident or to see about the——

A. (Interrupting) No.

Q. You didn't talk to anyone on the day you made the examination? A. No.

By Mr. Maddox: I have no other questions.

(Deposition of Dr. Gustavo Arevalo.)

Redirect Examination

Q. (By Mr. Templeton): Doctor, one or two questions. Do you recall what the—do you recall or not Doctor Hahn was a caucasian or an oriental, or what?      A. Did I know what?

Q. Do you recall whether or not the body of—that Doctor Hahn, whose body you examined, do you recall whether [45] or not that body was a body of a caucasian or of an oriental?

A. It is right here, “Nationality, Korean.”

Q. Nationality Korean?      A. Yes.

Q. Now, Doctor, the fact—does the fact that the body of Doctor Young D. Hahn was a Korean, does that assist in refreshing your memory as to the facts that you have testified to?

A. Well, of course, yes.

Q. Do you have—have you performed the autopsy of many Koreans?      A. No.

Q. And——

A. (Interrupting) The first one.

Q. That was the first one?      A. Yes.

By Mr. Templeton: That’s all.

By Mr. Maddox: That’s all. [46]

State of California,  
County of Imperial—ss.

I, M. Gayle Amack, a notary public within and for the County of Imperial, State of California, do hereby certify:

That prior to being examined the witness, Gus-

tavo Arevalo, was sworn by me to testify to the truth, the whole truth and nothing but the truth;

That the said deposition was taken down by me in shorthand at the time and place herein stated and was thereafter reduced to typewriting under my direction;

I further certify that it was stipulated by and between counsel for the respective parties hereto that the signature to said deposition be waived, and that it shall possess the same force and effect as though read and signed by the said witness.

Witness My Hand and official seal this 4th day of March, 1954. My notarial commission expires March 8, 1957.

[Seal]        /s/ M. GAYLE AMACK

Notary Public in and for the County of Imperial,  
State of California.

[Endorsed]: Filed March 5, 1954.

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[Title of District Court and Cause.]

## DEPOSITION OF CELESTINNO LUPERCIO PEREZ

Appearances: For S. D. Hahn: Edward Carter Maddox, Attorney at Law. For Sarah E. Padre: Templeton and Miller, Attorneys at Law, by Harry E. Templeton. [1\*]

The deposition of Celestinno Lupercio Perez,

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.

taken on behalf of Sarah E. Padre in Room 110, De Anza Hotel, in the City of Calexico, County of Imperial, State of California, commencing at approximately 11:20 o'clock a.m. on the 27th of February, 1954, before M. Gayle Amack, a notary public within and for the County of Imperial, State of California, pursuant to notice.

(Daniel Castillon, being first duly sworn to act as interpreter, translates the following proceedings from English into Spanish and from Spanish into English.)

By Mr. Maddox: Mr. Templeton, I'd like to ask the interpreter one or two questions. What is your name, please?

By the Interpreter: Daniel Castillon.

By Mr. Maddox: And you are to interpret from English into Spanish and from Spanish into English?

By the Interpreter: Yes, sir.

By Mr. Maddox: And are you in any way attached to the Court in this County?

By the Interpreter: No, but I have interpreted for the Assistant District Attorney, Traviss, in El Centro.

By Mr. Maddox: I see. You are not a part of the official Court staff of interpreters?

By the Interpreter: No, I am not.

By Mr. Maddox: Are you personally acquainted with any of the persons in this room today? [2]

By the Interpreter: No, except the man who hired me to interpret for him, Mr. Templeton.

By Mr. Maddox: Not with the witness:

By the Interpreter: No, not with the witness. I met the witness at the Comendancia; Headquarters, Police Headquarters, because I was supposed to pick him up.

By Mr. Maddox: What is your occupation?

By the Interpreter: I run a little taxi stand in Brawley.

By Mr. Maddox: All right, no other questions.

### CELESTINNO LUPERCIO PEREZ

a witness produced on behalf of Sarah E. Padre, being first duly sworn to state the truth, the whole truth and nothing but the truth, testified on his oath through the interpreter, as follows:

#### Direct Examination

Q. (By Mr. Templeton): Will you state your full name?      A. Celestinno Lupercio Perez.

Q. What is your occupation?

A. I am an employee of the Government.

Q. What is the nature of that employment?

A. I am employed by the Department of Patrol.

Q. Is that of the Police Department of Mexicali?

A. Yes, it is with the Police Department of Mexicali. [3]

Q. And what is your rank in the Police Department?

A. I am the Chief Officer of the Department Patrol.

Q. And on the 18th day of April—and on the 19th day of April, 1953, were you so employed by



(Deposition of Celestinno Lupercio Perez.)

the Police Department of Mexicali? A. Yes.

Q. And what was your position at that time?

A. I was a Corporal in the Patrol Department.

Q. And have you since been advanced?

A. Yes, I am an Officer.

Q. Well, is he a Lieutenant or a Captain?

A. I am a Lieutenant.

Q. On or about April 18th were you—what were your duties on or about April 18th, 1953?

A. I was a Patrolman of the City.

Q. And on that date were you in—were you using a Patrol car?

A. Yes, I was using a Patrol car.

Q. And were you alone or did you have a partner?

A. I was then with the Officer that was Manuel Wong Beltran.

Q. And on that date were you and your fellow Officer, or did you and your fellow Officer receive a call to go to the scene of an accident on the Mexicali-Tijuana Highway? A. Yes, sir.

Q. At about what time of day was it that you [4] received the call?

A. I returned around 1:30, so it must have been around 1:00 o'clock.

Q. And did you go pursuant to that call to the scene of an accident on Mexican Highway No. 2 between Mexicali and Tijuana?

By the Interpreter: Please repeat that question.

(The reporter read the last question.)

(Deposition of Celestinno Lupercio Perez.)

A. Yes.

Q. How did you receive the call to go to that accident?

A. Through the station of the Rumurosa.

Q. And did your partner go with you at that time?      A. Yes.

Q. Approximately where on the Highway did this accident take place to which you received the call?

A. Are you referring to what part of the Highway?

Q. Yes, what part of the Highway?

A. It was right along the Laguna Salada.

Q. Do you know approximately how far it is from the City of Mexicali to the scene of the accident?

A. I don't recall very well whether we have that included in the report.

Q. When you got to the scene of the accident what, if any, vehicles did you find were involved in the accident?

A. The only car present was the Nash, where the [5] passengers collided with the equipment at the scene of the accident. And Mr. Luna's car was also there and ours.

Q. And was there any kind of machinery involved in the accident?

A. Yes, there was a cement mixer.

Q. Which direction on the Highway was the Nash headed? Toward Mexicali or toward Tijuana?

A. From Tijuana to Mexicali.

(Deposition of Celestinno Lupercio Perez.)

Q. And I understand you to say that there was the Nash, the cement mixer and the car, or which Luna was there?

A. When we got there Mr. Luna's car was there already.

Q. Did you have any conversation with Mr. Luna with regard to the accident?

A. No, all we did was get there and we pick up the lady and we drove away.

Q. When you arrived at the scene of the accident were there any other persons there besides the three injured persons and Senor Luna?

A. The only person we saw there was the lady.

Q. Did you see Senor Luna's partner?

A. No.

Q. Did you see anyone in the Nash automobile?

A. Just the person that was in the car and he stayed there.

Q. Did you later determine who the person was who was in the car? [6]

A. We didn't take any further data.

Q. Did you see a boy?

A. At the scene of the accident?

Q. Yes.

A. No, we saw him at the hospital.

Q. Do you know whether or not there was or was not a boy in the car at the time of the accident?

A. No, I can't identify that, but when we got to the hospital they told us that it was a boy that was in the car with the rest of the injured parties.

Q. Did you see the boy at the hospital?

(Deposition of Celestinno Lupercio Perez.)

A. Yes.

Q. Do you know how he got to the hospital?

A. Dead.

Q. Well, do you know how he was transported to the hospital?

A. People driving the private car of a Buick model.

Q. Do you know who the party was that was driving that Buick car?

By Mr. Maddox: Wait now, I am going to object to this. This calls for a conclusion and it is hearsay.

Q. Well, I am asking him if he knows. Well, I will withdraw the question. Did you see the Buick car, did you see it at the hospital—did you see the car that the boy had been brought to the hospital in?

A. Yes, and we took all of the information from the [7] owner of the car.

Q. And you talked with the man who had driven the car?

A. Naturally, so that I could get his address and his name.

Q. And was one of your duties as a Police Officer to take the information as to who was driving the car and what had been done with the body?

By the Interpreter: Please give me a repetition on that question.

(The reporter read the last question.)

A. Yes.

Q. And in carrying out your duties did you

(Deposition of Celestinno Lupercio Perez.)

determine the name of the person who was driving that car?

By the Interpreter: Please repeat that again.

(The reporter read the last question.)

A. Yes.

Q. What was his name?

A. It is written down in that paper, I can't remember.

Q. Do you have any independent recollection at this time as to the name of the person that was driving the car?

Q. What car, the one that was involved in the accident or the one that——

Q. (Interrupting) The Buick?

A. Yes, they live in Tijuana and they are written [8] down in the report.

Q. Well, did you make a written report in your Police records?

A. We didn't make a declaration, but we wrote down the report to the Police Department.

Q. Is this a document that I show you—is that an excerpt of the report as appeared upon the record of the Police Department that was made under your supervision?

By Mr. Maddox: Just a moment, I'd like to question him about this. May I have the question?

(The reporter then read the last question.)

By Mr. Maddox: You are asking him if this is an excerpt he made from the police report. All right, let him answer that.



(Deposition of Celestinno Lupercio Perez.)

Q. Read him the question again, please.

(Reporter then read the last question.)

A. Yes, that is the report of what is written at the Police Department.

Q. And do you know when this was made, do you know when this was prepared?

A. Are you referring to the report or to that?

Q. No, to this document?

A. It must have the date on it.

By Mr. Maddox: Let's hold it on the table, Mr. Templeton, I don't want him to refresh his memory from it until you lay the foundation for it. [9]

Q. Well, do you know whether or not this document was made within the last two weeks?

A. More or less, when it was requested.

Q. And—well, you can go ahead and question him if you want to.

By Mr. Maddox: Well, I'd just leave it here, I don't think any foundation has been laid. I am going to object to the use of it, though.

Q. All right. Mr. Lupercio, do you know—I show you this document to which I have referred, and I will ask you if by referring to this document you are able to give me the name of the party who was driving the Buick automobile?

By Mr. Maddox: Now, don't give it to him yet.

A. Yes.

Q. Will you refer to this document?

By Mr. Maddox: I will object to the use of that. You haven't laid any foundation to that document, and I will object to the use of it.

(Deposition of Celestinno Lupercio Perez.)

Q. All right, we'll go back a little further. Mr. Lupercio, at the time of the accident, or shortly after the accident, you made a report—or did you make a report in your Police records with respect to the accident to which I have—about which I have been questioning you?

A. That is the whole report.

Q. In other words, you did make the report?

A. Yes.

Q. And on or about the—or within the past two weeks you were requested to furnish an excerpt and furnish a record of that report? A. Yes.

Q. And do you have any independent recollection as to the name of the party that was driving the Buick, other than the records that were made by you at the time in your Police report?

A. No, I can't, it is all there.

Q. Now I show you——

By Mr. Maddox: (Interrupting) Let me ask him a question on this now.

By Mr. Templeton: All right.

#### Voir Dire Examination

Q. (By Mr. Maddox): Your name is Lupercio, is that right? A. Yes.

Q. And who is Captain Jorge Dominguez?

A. He is the new Commandant.

Q. Who was Commandant at the time you made your report? A. Jesus Maroquin Villreal.

Q. Did you make your report to your Commandant on the 18th of April?

(Deposition of Celestinno Lupercio Perez.)

A. Yes, everything has been taken care of. [11]

Q. And did you go back to the office and tell him just what you had observed out on the road?

A. Everything has to be written down.

Q. Well, who wrote it down, did you write it down or did someone else write it down?

A. We have the typist at the Headquarters that does the writing for us.

Q. Did you dictate your report to the typist?

A. Yes.

Q. And was that done on the same day that you observed these cars out on the Highway?

A. Immediately, right after.

Q. Immediately after. And have you had occasion to make any other reports since then?

A. Very many.

Q. Reports on this particular accident?

A. No, that is the only one.

Q. Have you had occasion to go back and read over the report at any time since you made it?

A. No, I haven't had any time, we just brought it out the other day.

Q. So two weeks ago was the first time you had seen the report since you dictated it to the typist?

A. Yes.

By Mr. Maddox: That's all. I object to it now on the ground that he didn't supervise the preparation of it. [12]

Direct Examination—(Continued)

Q. (By Mr. Templeton): Mr. Lupercio, after

(Deposition of Celestinno Lupercio Perez.)

this report was dictated to the stenographer and was written up by her, did you read it over?

A. Yes, once we have it dictated we have to read it to approve it.

Q. And you did read it, then you approved the report as written? A. Yes.

Q. And did you sign that report?

By the Interpreter: Yes, I signed it. Oh, excuse me, but he did say that he had signed it.

Q. Well, ask him the question. A. Yes.

Q. Now, I show you this report.

By Mr. Maddox: You can use it now, I have no objection to it.

Q. Will you mark this for identification, Number 3?

(The document was so marked.)

Q. Now, will you examine this report, Mr. Lupercio, and just read it over to yourself?

(Witness examines document.)

Q. Now, Mr. Lupercio, are you able to tell me the name of the driver of the Buick automobile that brought the boy to the hospital? [13]

A. Galdino Loza Cuevas.

Q. And did you talk to Mr. Cuevas at the hospital?

A. Yes, because I wanted his domicile and his name.

Q. And was anyone else with Mr. Cuevas in the Buick automobile that you know of?

A. Yes, a woman was with him.

Q. And did you ascertain from any source how

(Deposition of Celestinno Lupercio Perez.)

the boy was transported from the scene of the accident to the hospital?

A. Yes, they had him in the Buick car.

Q. And do you know whether or not he was alive or dead at the time he arrived at the hospital?

A. He arrived to the hospital dead.

Q. Did you ascertain from Senor Cuevas or from the woman that was with him approximately when the boy had died?

By Mr. Maddox: I will object to that, that calls for hearsay.

Q. I will withdraw the question. Was it, as a Police Officer, one of your duties to question the parties who brought in the body of the boy to the hospital?

By the Interpreter: Repeat that question, please.

(Reporter then read the last question.)

A. Yes.

Q. And in that capacity did you question them, question Mr. Cuevas as to when the boy died? [14]

A. No.

Q. Did he tell you when the boy died?

A. No, he didn't.

Q. Did you question the woman who was with him as to when the boy had died?

A. What woman?

Q. The woman in the car with Mr. Cuevas, in the Buick? A. No, we didn't ask them.

Q. Do you know whether or not the Buick had picked up the body of the boy and left the scene of the accident before you arrived?



(Deposition of Celestinno Lupercio Perez.)

By Mr. Maddox: Just a minute, I'll object to that, it calls for a conclusion. You're asking him whether or not he knows something happened while he wasn't there.

Q. I am asking him whether he knows, yes or no.

By Mr. Maddox: Yes, but such knowledge could only be gained by hearsay.

Q. All right, ask him to answer the question yes or no.

By Mr. Maddox: I'll object to that as it calls for hearsay. He cannot possibly know what happened when he was not there.

Q. Ask him to answer that yes or no.

By the Interpreter: Will you repeat the question, please, I got sidetracked again?

(Reporter read the last question.) [15]

A. When we got there the boy wasn't there any more.

Q. Did you have any conversation with Mr. Luna in which there was any discussion about whether or not the boy had or had not been sent to the hospital?      A. No.

Q. Do you know what happened to the body of the man that was involved in the accident and who was riding in the Nash?      A. No.

Q. Well, when you arrived at the scene of the accident was there a body of a man in the Nash car?      A. Yes.

Q. Where was this body?

A. He was in the front seat of the car.

(Deposition of Celestinno Lupercio Perez.)

Q. What was the condition of the automobile in which the man's body was located?

A. It was all smashed in, the front, right door.

Q. Did you examine the body of the man?

A. No.

Q. Do you know whether or not the man was dead or not?           A. No.

Q. Do you know whether or not the body of the man was ever taken to the hospital?

A. We didn't take any more data, some other authorities took care of him. [16]

Q. Why did not you take care of the body of the man?

A. Because that was none of our affair.

Q. Why wasn't it a part of their affair?

A. Because it has to do with the—I believe it is the District Attorney's Office.

Q. Why is the District Attorney's Office involved with a body of a man?

By Mr. Maddox: I'll object to this. The question has been asked and answered.

Q. No, it hasn't.

By Mr. Maddox: And you are calling for a legal conclusion as to an area in which he says he has nothing to do with, and he can't explain the operations of the D. A.'s Office, and if you ask him to, you are asking him for an opinion. He is not an expert.

Q. You have your objection. Will you ask him the question so he may answer? Will you read the question?

(Deposition of Celestinno Lupercio Perez.)

(Reporter read the last question.)

A. Because in all those cases he is the one who has to take care of them.

Q. Well, why did he take the body of the woman in and the body of the boy was taken by another car and no one took the body of the man in?

By Mr. Maddox: Objection, it calls for an opinion, calls for a conclusion.

A. The people we take for granted are dead we don't [17] fool with and we only give aid to the injured.

Q. Then had you determined that the man was already dead at the time you were at the scene of the accident?

A. Yes, we did because we saw him destroyed.

Q. Was the body of the man taken directly to the morgue? A. We don't know.

Q. Do you know whether or not the body of the man was ever taken to the hospital? A. No.

Q. He doesn't—you don't know, or is it the answer that you do not know whether it was taken there or that the body was not taken there?

A. All the bodies had to go, by law, to the hospital whether they were dead or alive.

Q. But the live bodies of persons that are live go to a different department at the hospital than those who are dead, is that not a correct statement?

By Mr. Maddox: I object to that, he is not a hospital official and he doesn't know the work of a hospital. A. The dead go to the——

By the Interpreter: I can't translate that, but

(Deposition of Celestinno Lupercio Perez.)

what he gave me he said it is a place where they take people that are dead, then they take others to the department where they treat them.

Q. And do you know of your own knowledge whether the [18] body of Dr. Hahn, or the man who was in the automobile was taken directly to the amphitheater?

By Mr. Maddox: I'll object to that, he said already he doesn't know. He has answered that question.

A. The child, I know he was taken directly to the hospital, the dead man I really don't know anything about him.

Q. When you left the scene of the accident was Senor Luna still there?

A. Yes, he remained there.

Q. Do you know whether or not—do you know who took care of the body of the man who was in the car?      A. No.

Q. In your investigation of this accident did you determine approximately the time that the accident occurred?      A. No.

By Mr. Templeton: Cross examine.

### Cross Examination

Q. (By Mr. Maddox): Does your record there indicate the date that this accident took place?

A. Yes.

Q. And what was the date that it took place?

A. 18th of April.

Q. And when you saw the boy it was after

(Deposition of Celestinno Lupercio Perez.)

midnight and the morning of the 19th, was it not?

A. We saw him at the hour stipulated on that report.

Q. Well, I want to know if that was—ask him if that was after midnight of the 18th.

A. Well, our report reads that it was at 1:30, so it was at 1:30.

By Mr. Templeton: Is that a.m. or p.m., is it morning or night? A. In the morning, a.m.

Q. Where was the body of the boy the first time you saw it?

A. I saw them at the hospital when they dragged him—when they pulled him out of the car and took him inside the waiting room at the hospital.

Q. How long had you been at the hospital when the body of the boy arrived?

A. It must have been about ten minutes, because I was helping the nurse on the table where he was sitting there, you know, he was laying down and I was there helping her when they brought him in.

Q. It was your statement that at the time you arrived at the scene of the accident the body of the boy was not there, is that not true?

A. We didn't see him.

Q. How long did you remain at the scene of the accident?

A. We just stayed there long enough to get the woman [20] in the car.

Q. Would you say that was approximately ten minutes? A. No more or less.



(Deposition of Celestinno Lupercio Perez.)

Q. And did you drive directly to the hospital from the scene of the accident? A. Yes.

Q. How long did it take you to drive from the scene of the accident to the hospital?

A. It must have been about twenty minutes because we were speeding.

Q. How long—what is your estimate of the time it would take if you were not speeding?

A. About forty-five minutes.

Q. Did you pass a Buick automobile which you later saw containing the body of the boy, did you pass that automobile on the Highway on the way to the hospital?

A. It is possible, but we don't recollect that.

Q. Did you get the name of the woman who was in the Buick automobile?

A. I am afraid it was only the name of the driver.

Q. Do you have the address of the driver?

A. Yes.

Q. What is his address?

A. 609 Revolucion Avenue.

Q. Do you know his occupation?

A. No, I don't know his occupation. [21]

Q. Did this man ever live in Mexicali?

A. No.

Q. Do you know him personally?

A. That is the first day I ever saw him.

Q. Have you seen him since that day?

A. The only person I have seen is the woman once or twice.

(Deposition of Celestinno Lupercio Perez.)

Q. Do you know what they did with the bodies of the father and son after they were brought to the hospital?      A. No, I don't.

Q. Have you ever been in the morgue?

By Mr. Templeton: In what?

Q. Have you ever been in the morgue?

By the Interpreter: Please repeat that, I didn't get that.

Q. Have you ever been in the morgue?

A. No.

Q. Do you know whether or not any method is used to preserve bodies after they are brought to the morgue?

By Mr. Templeton: Just a moment, I am going to object to that as calling for a conclusion of the witness on a matter on which he is not qualified as an expert. He may answer now that my objection is in.

By Mr. Maddox: Read him the question again, please.

(Reporter then read the last question.)

A. No. [22]

Q. You said you saw Luna at the scene of the accident?      A. Yes.

Q. Do you know a fellow by the name of Bello? Do you know Bello, the fellow who works with Luna?      A. That works with whom?

Q. With Luna?      A. No, I don't.

By Mr. Maddox: All right, no other questions.

(Deposition of Celestinno Lupercio Perez.)

Redirect Examination

Q. (By Mr. Templeton): I have two or three questions. Mr. Lupercio, I will call your attention to this report. It shows the name here of Senora Elena Montoya. Where did you obtain that name?

A. That is all I could understand from this injured woman at the scene of the accident, so that is the name I took.

Q. In other words, it sounded like Montoya to you?

A. Yes, because I couldn't understand her. She was very badly injured in the month.

Q. And I notice you have the name of the minor as Eberto Montoya.

A. We asked her and she gave us that name.

Q. What was the nationality of the woman?

A. We don't know but she spoke good Spanish.

Q. Do you know what the nationality of the man and [23] boy was?      A. No.

Q. Do you know whether or not they were Caucasians or Orientals?

A. No, we didn't investigate anything like that.

Q. Well, do you know whether or not there was more than one accident on the Tijuana-Mexicali Highway at or about 160 kilometers from Tijuana on the night of April 18th, 1953?      A. No.

Q. You heard of no other accident on that date?

A. No.

By Mr. Templeton: That's all.

(Deposition of Celestinno Lupercio Perez.)

Recross Examination

Q. (By Mr. Maddox): I wish to ask him this: Please describe as best you can Senor Ceuvas.

A. He appears to be an elderly person, medium height or regular height.

Q. Would you say he is the height of Mr. Templeton?      A. A little less.

Q. Approximately what is his weight?

A. About 160 pounds and 75 kilos, about 75 kilos or 160 pounds.

Q. What color was his hair?

A. I didn't notice that, it was night time. [24]

Q. Did you notice the color of his eyes?

A. No.

Q. Did he wear glasses?      A. No.

Q. You said he is an elderly person. About what age would you say?

A. About forty years I would presume.

Q. How was he dressed on that night?

A. Just like a common laborer.

Q. Do you have the license number of his automobile?

A. They are on the copy. B-8826.

By Mr. Maddox: All right, that's all. [25]

State of California,  
County of Imperial—ss.

I, M. Gayle Amack, a notary public within and for the County of Imperial, State of California, do hereby certify:

That prior to being examined the witness, Celes-

(Deposition of Celestinno Lupercio Perez.)

tinno Lupercio Perez, was sworn by me to testify to the truth, the whole truth and nothing but the truth;

That the said deposition was taken down by me in shorthand at the time and place herein stated and was thereafter reduced to typewriting under my direction;

I further certify that it was stipulated by and between counsel for the respective parties hereto that the signature to said deposition be waived, and that it shall possess the same force and effect as though read and signed by the said witness.

Witness My Hand and official seal this 4th day of March, 1954. My notarial commission expires March 8, 1957.

[Seal]            /s/ M. GAYLE AMACK

Notary Public in and for the County of Imperial,  
State of California.

[Endorsed]: Filed March 5, 1954.



[Title of District Court and Cause.]

## TRANSCRIPT OF PROCEEDINGS

Los Angeles, Calif., Monday, Aug. 16, 1954

Honorable Ben Harrison, Judge presiding.

Appearances: For Plaintiff, Messrs. Adams, Duque & Hazeltine (no appearance). For Defendant Sarah E. Padre, etc.: Messrs. Templeton & Miller, by Harry E. Templeton, Esq. For Defendant S. D. Hahn, etc.: Edward Carter Maddox, Esq.; Isaac Pacht, Esq. [1\*]

The Court: You may proceed.

The Clerk: No. 15,951 Civil, The Prudential Insurance Company of America, plaintiff, vs. Sarah E. Padre and others.

Mr. Pacht: The defendants are ready.

Mr. Templeton: We are ready, your Honor.

The Court: I understood from the last hearing that you wanted to introduce a deposition.

Mr. Templeton: Yes, your Honor, the deposition of Ernestina Thompson. Shall I read the deposition?

The Court: I have read it.

The Clerk: Is that the one filed on May 22nd?

Mr. Templeton: I don't know the date of filing. It was taken on May 8th. Yes, that would be the one filed on the 22nd.

The Clerk: That is Padre Exhibit G in evidence.

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\* Page numbers appearing at top of page of original Reporter's Transcript of Testimony.

(The document referred to, marked Defendants' (Padre) Exhibit G, was received in evidence.)

Mr. Templeton: The deposition is deemed in evidence.

The Court: You may file it.

Mr. Templeton: The original has been filed and I offer that in evidence.

The Court: It may be deemed read. I have read the deposition. [3]

I understand counsel has some other witnesses they wish to present.

Mr. Pacht: Yes, we have one, your Honor.

The Court: You may proceed.

Mr. Pacht: Mr. Ritchy.

### BERT RITCHY

called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Bert Ritchy.

### Direct Examination

Q. (By Mr. Pacht): What is your business or occupation, Mr. Ritchy?

A. Police officer, City of San Diego.

Q. How long have you been such?

A. 18 years and about two months.

Q. What department of the police department are you now attached to?

A. The homicide detail.

Q. How long have you been in that department?

(Testimony of Bert Ritchy.)

A. 14 years.

Q. And in the course of your duties as a police officer and particularly in the department that you have designated, have you had occasion to make investigations of homicides and accidents? [4]

A. Yes, sir.

Q. Calling your attention to an occasion of Friday, May 7, 1954, did you have a conversation with a lady named Ernestina Thompson?

A. Yes, I did.

Q. Where did that conversation take place?

A. At Mrs. Thompson's home in San Ysidro, California.

Q. About what time of the day or night?

A. A few minutes after 7:00 p.m. on Friday, the 7th of May.

Q. Who other than yourself and Mrs. Thompson were present when you had the conversation?

A. I met Mrs. Thompson and her husband, who were out in the yard weeding in the flower bed. Mr. Thompson stood a few feet from us for a few moments and then left to continue his work in the bed and he walked away a distance of probably 25 or 30 feet and about five or six minutes after I had been talking to Mrs. Thompson another gentleman came in to the yard. He spoke to Mrs. Thompson and went directly back to where Mr. Thompson was working and had a conversation with him.

I believe that was the gentleman seated at counsel table there.

Q. Mr. Templeton?

A. Yes. [5]

(Testimony of Bert Ritchy.)

Q. I will ask you if at that time and place Mrs. Thompson did not state to you that when she arrived at the scene of the accident in which the man and boy and woman were involved near Mexicali, she did not say to you that two police cars were already there? A. Yes, she did.

Q. I will ask you if at that same time and place when you had your conversation with her Mrs. Thompson did not tell you that when she arrived at the scene of the accident she saw three persons in the car, the man, the child and a woman and that the woman was seated in the driver's seat of the car? A. Yes, she did.

Q. During the same conversation to which I have invited your attention I will ask you if Mrs. Thompson did not tell you that when she left the scene of the accident she left the man, the injured man and woman there? A. Yes, she did.

Mr. Templeton: Will you read the question and answer, Mr. Reporter.

(Question and answer read as follows:

“Q. During the same conversation to which I have just invited your attention I will ask you if Mrs. Thompson did not tell you that when she left the scene of the accident she left the man, the injured man and woman there? [6]

“A. Yes, she did.”)

Q. (By Mr. Pacht): I will ask you if at that same time and place she did not tell you that when she left the scene of the accident, leaving the in-

(Testimony of Bert Ritchy.)

jured man and woman there, that the witness Cruevas departed with her?      A. Yes, she did.

Q. Did she, during the course of that conversation, tell you what time she arrived, she and the witness Cruevas arrived at the scene of the accident?

A. She stated she did not know the exact time but that they left Tijuana around 10:00 o'clock on their way to Mexicali and she stated that they had been driving about two hours when they came upon the accident.

Q. Did Mrs. Thompson during the course of this conversation tell you that she and Mr. Cruevas took the child in their automobile and placed the child in the rear seat of the car?

A. Yes, she did.

Q. What if anything did she tell you as to what her observation was as to whether the child was dead or alive or if the child died on the way to the hospital—what she knew about that fact?

A. She stated that when the child was placed in the rear seat she was sure that the child was alive.

She stated that the child was placed across the back [7] of the rear seat and that on the trip to Mexicali she kept one hand over the back seat and up against over the back of the front seat and up against—against the child's body to keep the child from rolling as they were driving. And she stated that just before they got into Mexicali she thought that the child had died.



(Testimony of Bert Ritchy.)

Q. Did you ask her how she came to that conclusion?

A. Yes. I asked her how she knew that the child was dead and she stated that he just seemed to lie still and he seemed, on the way down he seemed like he had some life in him but shortly before they reached Mexicali he seemed like he was just lying perfectly still.

I asked her whether or not she felt his pulse and she said no. I asked her whether or not she felt his heart and she said no.

Then I asked her whether or not she might have looked at his eyes and she said no.

And I asked her again: "Are you positive that the child was dead" and she said: "Well, I am pretty sure."

Q. Did you ask her whether she had made any observation upon her arrival at the scene of the accident as to whether or not the man in the car was dead or alive?

A. Yes, I did. I asked her how did she know—I asked the question: "How do you know that he was dead" and she said: "Oh, he lie very still." [8]

I asked her if she felt his pulse and she said no. I also asked her, of course, if she had felt his heart or whether she had noticed the pupils of his eyes and she said no.

I asked her if she touched him at all and she said that she did not touch him.

Q. Did you ask her how soon after her arrival

(Testimony of Bert Ritchy.)

at the scene of the accident she looked at or observed the injured man in the car?

A. I don't think I asked directly that question but I asked her how long she was at the scene of the accident and she said for just a little while.

I asked her what was the first thing that she did when they arrived at the scene and she said that they got out of the car and that the two police officers were there and they were trying to flag traffic and I said "Flag traffic." I asked her was the traffic heavy on the highway and she said no.

They were trying to get some cars to stop and help them. And then I asked her then: "What did you do" and she said: "Then we went right over and looked at the car and saw the people in the car and went around to the driver's side and the lady was hollering 'Please help me, please help me.'"

And we looked at the man in the front seat and I am sure he was dead. He wasn't moving. And the boy was in the back seat and he was still alive. [9]

And she stated that the boy was placed in the back seat of the car she was riding in and they left immediately for Mexicali.

Q. Did you ask her or did she tell you how long the police officers had been at the scene of the accident when she arrived?

A. No, I did not ask her that question.

Mr. Pacht: You may cross examine.

### Cross Examination

Q. (By Mr. Templeton): Mr. Ritchy, by whom

(Testimony of Bert Ritchy.)

were you employed to make this investigation?

A. I was employed I thought at the time, by Mr. A. H. Montgomery.

Q. Well, did you subsequently find out you were employed by somebody else?      A. Yes, sir.

Q. By whom?

A. By Mr. Edward Maddox.

Q. You were not making this investigation as a police officer of the San Diego Police Department?

A. No, sir.

Q. Mr. Ritchy, do you speak Spanish?

A. No, sir.

Q. Did you talk to this lady in Spanish? [10]

A. No, sir.

Q. Is it not a fact that it is very difficult for her to understand some of the English language?

A. No, sir.

Q. Isn't it a fact, Mr. Ritchy, that she carries on a conversation in English with difficulty?

A. My opinion would be no.

Mr. Templeton: No further cross examination.

The Court: That is all.

Mr. Patcht: If the court please, during the cross examination of the witness Cruevas——

Mr. Templeton: Counsel, are you arguing the case now?

Mr. Patcht: No. Mr. Maddox attempted to impeach the witness's testimony by asking him whether he had been convicted of an offense not amounting to a felony.

Your Honor at that time held that under the

usual rule that a witness can only be impeached by proof that he had been convicted of a felony.

I ask leave, if the court please, to re-open that question for a moment if I may by tendering to the court as an exhibit the record of the conviction of that witness in the courts of Mexico of a crime not amounting to a felony but to moral turpitude.

This may be a case, your Honor, where a record of a conviction of that kind of an offense may be relevant to the [11] question as to the weight to be given to the witness's testimony.

I have that record here and I would like to offer it in evidence.

The Court: You may offer it.

Mr. Templeton: If the court please, I would like to be heard on that.

I am going to object to it on the basis that at the time Mr. Maddox was asked if he had any such testimony here to offer with regard to convictions of felonies, and the witness testified and said that he did not. The witness testified not only that he had not been convicted of a felony but had not been convicted of any other crime as I recall it.

I do not believe that this record would come within the admissible evidence rule because it would have to be a conviction of a felony to be admissible.

The Court: I am going to admit it.

Mr. Templeton: May I see it, counsel?

Mr. Pacht: Excuse.

The Court: Any other witnesses?

Mr. Pacht: None, your Honor.

The Court: May I ask is there any question that

the doctor was not taken directly fom the accident to the morgue?

Mr. Templeton: Is there what?

The Court: Is there any testimony here that the doctor [12] was not taken directly to the morgue, the body of the doctor?

Mr. Pacht: I don't think there is.

The Court: His body was taken directly to the morgue?

Mr. Maddox: I think it was.

Mr. Pacht: That is my recollection of the testimony.

Mr. Maddox: Yes, but not immediately.

The Court: I am willing to listen to any argument that counsel has.

Mr. Templeton: I further object to the introduction of this testimony on this document on the basis that this refers to a man by the name of Jose Losa Cruevas and not Galbino Losa Cruevas, the witness we had in court.

The Court: I will admit it for what it is worth.

Mr. Templeton: There is nothing to tie it in that this is one and the same person.

The Court: May I see it?

The Clerk: This is marked S. D. Hahn Exhibit 1.

(The document referred to, marked Defendants' Exhibit (Hahn) 1, was received in evidence.)

The Court: You may proceed.

Mr. Templeton: Before the argument, your Honor, I would like to take the stand on one point and testify that this woman does find it difficult to



speaking coherently in the English language. I am speaking of Mrs. Thompson.

The Court: Well, I think the record already discloses [13] that an interpreter was used in the taking of her deposition.

Mr. Templeton: Very well, your Honor.

The Court: What was this alleged conviction?

Mr. Pacht: It was the crime of exposing his sexual organs in public.

The Court: I will listen to any argument you have.

I want to say this, however, Mr. Pacht. While you just have come into the case, when this case was finally submitted to me before I felt that without some corroboration of Cruevas's testimony that I didn't have sufficient to find that the child had lived longer than the doctor.

I felt at that time it was a very close question. I made the comment, I think, that if we had corroboration it would be somewhat different and I am still of that opinion as far as the facts are concerned.

They had this terrible accident, this unfortunate accident and even though they had trouble removing the doctor's body I am satisfied that the doctor died before the child.

I am making that statement because heretofore I did not feel there had been that weight of testimony that would sway it one way or the other. I am speaking of the absence of corroborating testimony, but after reading this woman's deposition I

feel satisfied that Cruevas's testimony has been corroborated.

Maybe it isn't fair for me to make that statement before [14] you make your argument but I think sometimes it is a good thing for a judge to do. I remember when I practiced law I liked to know what was in the court's mind.

Mr. Pacht: It is very helpful, your Honor.

A moment ago I asked the question did they take the body of the doctor directly to the morgue and you said that they did. But in the case of the child when they started out they took the child to the hospital.

Now, if the child had been dead, as some of the witnesses testified and was lying in the back seat of the car there would have been no occasion to take him to the hospital. The mere fact that they started to the hospital with him indicates he was alive at that time.

Mr. Pacht: That may very well be the fact and yet it would not necessarily indicate that the father was dead. He was undoubtedly very badly injured and they had difficulty in getting him out of the place where he was wedged in, in the front of the car, but the fact is that the child died on the way to the hospital, according to the testimony.

The Court: Well, the question before me is whether he died on the way to the hospital or was he dead in the rear seat of the car. And I think the fact that he died on the way to the hospital is corroborated by this police officer's testimony of his conversation with this woman who said that they

took the child to the hospital and he died on the way. [15]

Mr. Pacht: That is only her conclusion without any of the usual indicia as to whether the child was dead or alive. She didn't feel his pulse. She didn't look at his eyes. She didn't feel his chest which is contrary to our testimony, by the way.

The Court: With all respect to this police officer's testimony, when he goes out as a special investigator for a party where there has been as much feeling as there has been in this case, I can't place too much weight upon it.

Neither this witness Cruevas nor this woman so far as I know, have any interest in this case whatsoever. At least there is no indication that they have any interest. They are about, you might say, they are about the only disinterested witnesses that we have had.

Mr. Pacht: Well, the same might be said with reference to the two Federal police officers who arrived at the scene of the accident and gave it as their testimony that the man was alive.

The Court: And the child was dead.

Mr. Pacht: That is right.

The Court: And yet they sent the child to the hospital. Why would they send the child to the hospital if he was dead? Why would the police officers send him to the hospital?

Mr. Pacht: Well, that is a question, a very important question, but on the other hand the testimony of Mrs. Thompson [16] is contradicted by herself in many places and contradicts the testi-

mony of the federal police officers as to when they got there—the police officers were there at the time she arrived or not. I have the places which show direct contradictions between her testimony and the police officers' testimony and her own testimony.

There are any number of places where she contradicts herself.

The Court: When before I took the case under submission there was such an even balance in the testimony I felt it couldn't be determined who died first because of a lack of corroboration on the part of the taxi driver or the man who drove Mrs. Thompson's car. I believe one of the witnesses testified he was a taxi driver.

Mr. Pacht: That is correct.

The Court: I felt that her testimony might overcome that balance.

Mr. Pacht: Well, your Honor has heard the evidence and has formed certain impressions from it and it is not for counsel to endeavor to impose his own ideas on the court.

As I read the testimony of Mrs. Thompson I gained the impression that she was quite uncertain and contradictory in many items and therefore I rather discount her testimony because there is no reason why these two federal police officers should testify as they did. [17]

The Court: Well, when a police officer in his spare time acts as a private detective he was out of his own jurisdiction and bailiwick and was performing services, probably, on his own time, which

he had a right to do, I presume, but he was there fore a purpose and I don't give his testimony the weight that I would give if he were before me in his official capacity. He was an interested party when he went down there to investigate this matter.

Mr. Pacht: Well, of course, we must also bear in mind that he has been a police officer for 18 years and he made no effort to color his testimony. For instance, he told your Honor that this woman told him that the child was alive when she took him to the hospital but that he died on the way to the hospital.

The Court: I realize that he corroborates Mrs. Thompson in that respect.

Mr. Pacht: He made no effort to color his testimony.

In addition to that you have the testimony of these two federal police officers who without equivocation——

The Court: I know, but they said the child was dead.

Mr. Pacht: That is true.

The Court: But at the same time they took the child out of the automobile and handed it to these people to take to the hospital. Now, those two things don't tie in together so far as I am concerned. [18]

Mr. Pacht: Well, I can see why that would raise a very serious question in your Honor's mind.

On the other hand, the only witnesses who say that the child was placed there for the purpose of being taken to the hospital are Mrs. Thompson and Mr. Cruevas. The police officers do not say that



they sent the child to the hospital. The police officers do not say that. They unequivocally say that their examination of the child showed that the child was dead and it seems to me that that statement in the record and taking into account the many inconsistencies in Mrs. Thompson's testimony, apart from this impeachment by Mr. Ritchy, that the conclusion which your Honor came to at the close of the case before it was re-opened that this was probably a simultaneous death and probably a correct one——

The Court: I don't know whether it was correct or not but I didn't feel that they had established it otherwise by a preponderance of the evidence.

In other words, I wasn't willing to hold that it wasn't a simultaneous death on the testimony of one person.

Mr. Pacht: That is all the argument that I have to make on that, your Honor.

The Court: This is a matter wherein I tried to get the people themselves to settle their differences.

Mr. Pacht: And both counsel have done that.

The Court: It is too bad that in a tragedy like this, [19] which has affected the lives of so many people, should be threshed out in a court. It is too bad they haven't been able to make adjustments between themselves. I am sure if they had followed your advice they would have made some settlement.

Mr. Pacht: I haven't been in touch with the parties with that thought in mind.

The Court: I think counsel have tried to encourage some settlement. I don't know what happened to it.

I think there has been some bitter feeling in this case by reason of some previous relationship. I believe that was because of the fact that the doctor and the mother of this child were never legally married and there apparently has been some feeling because of that. It is too bad to let that stand in the way of an amicable settlement.

Mr. Pacht: Well, I haven't explored the matter of settlement. I will be very glad to do so and see if the parties can come to some sort of amicable adjustment.

Mr. Maddox calls my attention to the fact and I now remember it was in the record, that the hospital and morgue are in the same building. And whether the police officers intended for the child to be taken to the hospital or to the building in which the hospital was located, which is also the morgue, is an open question.

Of course the Cruevas man and the Thompson witness say that they were taking the child to the hospital but we don't [20] know what directions were given to them by the two federal police officers.

But at any rate I would be glad to try my hand at effecting some adjustment of this matter between the parties and I am sure Mr. Templeton would join me in that effort.

Mr. Templeton: In regard to that, your Honor, I have made every effort to settle this thing, not once but two or three or four different times and we weren't able to get any place. I think the time for settlement has gone by. I don't believe it could be settled.

Mr. Maddox: May I make a brief statement on that? I don't know how important this is but I don't want you to think that my clients are just recalcitrant in this matter of settlement.

The Court: I am not saying that anybody is stubborn in the matter. It may be, however, that both sides have been stubborn.

Mr. Maddox: That is very well said. We offered to settle this on the basis of simultaneous death because it appeared that way and while Mr. Templeton and his client were completely opposed to this idea,——

The Court: Maybe your idea of settlement is to win the case. In a settlement each side makes concessions.

Mr. Maddox: That is what we were offering to do, make an equal distribution, but at that time he had this autopsy [21] report and he presented this autopsy report to me then and said, "Well, look at this. You don't expect me to settle for simultaneous death with this report."

I told him I didn't think it was valid and of course when the court ruled that this autopsy report was not admissible then Mr. Templeton said, "Well, I will be happy to settle—to compromise on simultaneous death."

Well, at that time we felt that—we were willing to make a compromise but not on that basis. And since he has produced these other witnesses we have not discussed compromise and settlement.

The Court: I always favor a settlement that is not harsh on either side, but if I have to decide

the case that is my function and I shall find that the father's death preceded that of the child.

Mr. Maddox: I want to make one statement on that if I may. I think there is one matter that Judge Pacht did not go into and that is—I would like to call the court's attention to the deposition of Mr. Peres. Mr. Peres was a police officer who was called by Mr. Templeton and he testified that he arrived at the scene of the accident and that he found the two federal officers there, the two we produced here in court.

His testimony is completely inconsistent with the testimony of the taxi driver and the woman who stated they were [22] first on the scene.

I think the great discrepancies, and I am in no position and I cannot ask the court to decide why there are discrepancies, but there are many discrepancies in this case.

The Court: Did you ever see an accident where there weren't discrepancies?

Mr. Maddox: No, your Honor, that is always true. There are always discrepancies but you must consider whether or not these discrepancies are as to material facts.

The Court: I think I leaned perhaps stronger without the corroboration, toward your side of the case. I could have found very easily that the taxi driver's testimony was true but I wouldn't accept it without corroboration.

Mr. Maddox: Well, he is disputed by Mr. Templeton's own witness. He is disputed as to who was there first.



Now, certainly if this driver was on the scene he should know whether or not there were police officers there before he got there or whether they came after he got there. They were very insistent that they were there first—the driver and also the woman who was his passenger.

Now, the testimony that is inconsistent with the testimony of the police officer, not the first two I brought here but the one who was produced by Mr. Templeton himself, and then the question is who was there first. You don't just take one aspect of the story. [23]

The Court: There are three points in this case as far as I am concerned. One is that the child was taken to the hospital; the man was taken to the morgue. That is almost sufficient in itself. I probably was leaning too strongly against Mr. Templeton's client when I didn't give too much weight or give the weight it was probably entitled to of the taxicab driver's testimony, but when they brought in this other witness I don't see how I can get away from it, counsel.

Mr. Maddox: Well, your Honor, I guess I answered improperly when I said that the father was taken to the morgue because I don't really know. I don't think that the record discloses anywhere that he was taken directly to the morgue. The hospital and morgue are in the same building.

The Court: There is no evidence he was ever taken to the hospital.

Mr. Maddox: No, but they were both taken to the same building, the same place. When you said



“directly” I didn’t know whether you meant did they stop somewhere on the way or was he kept out there, but they were both taken to the same building, to the same structure and there is a good explanation for it. After all perhaps the police officers would not like to be the ones to make a final determination of death when there is any doubt at all, so maybe the boy was taken to the hospital, but the father being pinned underneath the dashboard of the car could not be removed for some time. [24] Maybe, and it is likely he was taken to the morgue because of so much time having expired. There are many possibilities that can intervene in considering that one question.

But, your Honor, I submit again that the inconsistencies between—material inconsistencies between two witnesses called by the same side certainly is a basis for doubt as to the validity of the testimony. There are no inconsistencies between our witnesses. They gave simple statements and they told the court what happened as they saw it and I see no basis at all to doubt their testimony. There has been no impeachment of any of that testimony whereas these other witnesses hastily gotten together perhaps—I don’t know, but they are certainly contradicted on matters that they should know about if they were there and were able to account for what happened while there. It seems to me, to take just the fact, just one phase of the testimony and not consider anything else, overlooking a good possible basis of impeachment—

The Court: Well, counsel, we have a circuit court for that purpose.

Mr. Templeton, you will prepare findings this time. I think I was in error in ordering counsel to prepare findings the last time. I believe it was your job.

Mr. Templeton: I think it was.

The Court: Very well.

(Whereupon at 2:45 o'clock p.m. the above entitled matter was concluded.) [25]

[Endorsed]: Filed December 23, 1954.

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[Endorsed]: No. 14609. United States Court of Appeals for the Ninth Circuit. S. D. Hahn, as Administrator of the Estate of Young D. Hahn, deceased, Appellant, vs. Sarah E. Padre, as administratrix of the Estate of Herbert Huxley Hahn, deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: December 27, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14609

S. D. HAHN, etc.,

Appellant,

vs.

SARAH E. PADRE, etc.,

Respondent.

POINTS UPON WHICH APPELLANT  
WILL RELY

S. D. Hahn, as Administrator of the Estate of Young D. Hahn, Deceased, herewith designates the following points as those on which he will rely in the above matter:

1. That the District Court abused its discretion in granting Respondent a continuance on February 8, 1954, when this cause was set for trial, and was partially tried.

2. That the District Court abused its discretion in reopening this cause for taking of additional, cumulative evidence on April 5, 1954, after cause had been submitted and decision announced.

3. That the Findings in this cause are not supported by the evidence.

Dated: January 14, 1955.

EDWARD CARTER MADDOX,  
/s/ EDWARD CARTER MADDOX,  
Attorney for Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 17, 1955. Paul P. O'Brien, Clerk.